

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

SUZANNE Q. LITTLE, individually
and as Personal Representative of
the Estate of SAMUEL MARTIN
LITTLE, Deceased,

Plaintiffs,

vs.

BROWN & WILLIAMSON TOBACCO
CORPORATION individually and as
successor by merger to THE
AMERICAN TOBACCO COMPANY and
R.J. REYNOLDS TOBACCO COMPANY,

Defendants.

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CIVIL ACTION FILE

NO. 2:98-1879-23

VIDEOTAPE

DEPOSITION OF

ERIC GESELL

March 28, 2000
9:55 a.m.

191 Peachtree Street
Atlanta, Georgia

Alexander J. Gallo, CCR-B-1332, CRR

1 APPEARANCES OF COUNSEL

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3 On behalf of the Plaintiff:

4 .

5 Wm. MICHAEL GRUENLOH, Esq.

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10 On behalf of Brown & Williamson Tobacco

11 Corporation:

12 .

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1 Videotaped deposition of Eric Gesell

2 March 28, 2000

3 THE VIDEOGRAPHER: We are on the
4 video record at 9:55.

5 ERIC GESELL, having been first
6 duly sworn, was examined and testified as
7 follows:

8 MR. BASSETT: Mike, could we go
9 ahead and just set where we are with
10 stipulations? I will say Mr. Gesell does
11 want to read and sign.

12 MR. GRUENLOH: Okay.

13 MR. BASSETT: And that all
14 objections, except to the form of the
15 question, be reserved until such time as the
16 deposition may be used at trial or otherwise.
17 Okay?

18 MR. GRUENLOH: Okay.

19 EXAMINATION

20 BY-MR. GRUENLOH:

21 Q. Mr. Gesell, I'm Mike Gruenloh.
22 We met earlier.

23 A. Yes.

24 Q. Can you please state your full
25 name for the record?

1 A. Eric J. Gesell.

2 Q. Are you a doctor, Ph.D., or
3 anything?

4 A. No, I am not.

5 Q. We're here for the Little/Brown &
6 Williamson Tobacco case. I'm reading from
7 the amended notice of videotaped deposition.
8 It says, Counsel for Plaintiff will take the
9 videotaped deposition of Brown & Williamson
10 Tobacco Corporation as successor, by merger
11 to The American Tobacco Company, by the
12 person most knowledgeable about the marketing,
13 market research and consumer testing of
14 Carlton brand cigarettes for the years 1974
15 through 1995.

16 I would like to mark that as
17 Exhibit Number 1, please.

18 Is that your understanding of why
19 you're here to testify here today?

20 A. Yes, it is.

21 (Plaintiff's Exhibit-1 was marked
22 for identification.)

23 Q. (By Mr. Gruenloh) This is a
24 discovery deposition. It is not my intention
25 to try to trick you with any of my

1 questions. I want to find out what you
2 know. So it doesn't do me any good to try
3 to deceive you or trick you with any of my
4 questions.

5 If you don't understand what I'm
6 asking, please ask me to repeat it or I'll
7 try to reword the question. Same way, if I
8 don't understand your answer, I'm going to
9 ask you to try to elaborate on it so I can
10 understand what you're saying.

11 If you could try to keep all of
12 your answers oral today, try not to nod your
13 head. It's difficult for the court reporter
14 to take down nods and shakes of the head.
15 So if you can answer with yes or no, or
16 just explain your answer.

17 A. I understand.

18 Q. And as your Counsel said, he is
19 going to be objecting most likely to the
20 form of some of my questions. You still
21 have to answer the questions unless he
22 directs you not to answer the questions for
23 any reason. So understand that if he does
24 make an objection, you're still going to have
25 to, most likely, answer my question.

1 Last, but not least, before we
2 continue, we're not strict at all. If you
3 need to take a break at any time, if you
4 need to use the rest room or would like to
5 take a break for any reason, please do so.
6 Just let me know.

7 A. Understood.

8 Q. Have you ever been deposed before?

9 A. Yes, I have.

10 Q. Can you tell me when you were
11 deposed and in what actions?

12 A. The timing -- the sequence may be
13 a little off, but I was deposed for the
14 Minnesota case, and I guess it was against
15 the entire industry.

16 Q. The Minnesota Attorney General
17 tobacco case?

18 A. Yes. There was an ironworker's
19 case in Ohio, and there was also a case in
20 New York State. I don't recall who the
21 party was. It was a class action suit.
22 And the only other deposition was in 1994
23 for the FTC, which dealt with the pending
24 sale of American Tobacco to B.A.T.,
25 subsequent to Brown & Williamson.

1 Q. Let's start with your Minnesota
2 deposition. When was that?

3 A. Oh, it is a few years ago. It
4 was in the fall. I guess it's a couple of
5 years ago. I don't recall exactly the date.

6 Q. And you were a fact witness in
7 that case?

8 A. I was a fact witness, yes.

9 Q. Can you remember what the subject
10 of your testimony was?

11 A. The subject was the marketing of
12 American Tobacco products; and we reviewed
13 advertising, historical advertising, to a
14 great extent, advertising that actually
15 predates my birth to a great -- most of it,
16 going back to the '30s and '40s; and we
17 reviewed or discussed some market research
18 documents.

19 Q. Did you testify in the Minnesota
20 tobacco case?

21 A. No, I did not.

22 Q. The ironworker's case in Ohio --

23 A. Yes.

24 Q. -- was your testimony on that
25 same subject?

1 A. Some of the same issues came up,
2 sure. Some old market research information
3 from American Tobacco, going back to the
4 '50s. We did discuss some of the
5 advertising again. Basically that -- yes.
6 It was very similar.

7 Q. Was the focus of your testimony
8 in that case, again, on marketing and
9 consumer research?

10 A. Yes. Yes.

11 Q. And the New York State class
12 action -- I'm sorry, the ironworker's case,
13 when was that?

14 A. I guess it was not this fall, but
15 the fall before. So that would have been in
16 the -- I guess it was the fall of '98, I
17 think.

18 Q. The New York State class action,
19 do you remember the name of that case?

20 A. No, I do not. You would have to
21 ask the attorneys.

22 Q. When was that?

23 A. That was prior to the
24 ironworker's. That was probably eight months
25 earlier, if I recall.

1 Q. So a couple of years ago?

2 A. It's a couple of years ago, yeah.

3 Q. And again, the subject of your
4 testimony again in that case was?

5 A. Basically the same general area.
6 The focus may be on a different ad or a
7 different brand, but, yes, the same.

8 Q. Okay. And last the 1994 FTC case
9 regarding the sale of American?

10 A. That was the FTC's investigation
11 into whether or not they should approve the
12 sale of The American Tobacco Company to
13 B.A.T. Subsequently the sale was assigned to
14 Brown & Williamson.

15 Q. And what was the subject of your
16 testimony there?

17 A. It was just factual, a history
18 and reviewing basically the competitive nature
19 of the industry and whether it would be good
20 or bad for the industry if there would be
21 one less competitor.

22 Q. What was your conclusion?

23 A. I didn't really think it would
24 make too much difference whether there were
25 six or five. But there were specific

1 questions, and I don't really recall the
2 questions about different companies and their
3 strengths in different areas of the business.
4 Some companies were stronger, for instance,
5 in price value cigarettes, than others were,
6 and that kind of thing.

7 Q. Did you offer an expert opinion
8 in that case?

9 A. I was deposed as an officer of
10 The American Tobacco Company, so I don't know
11 whether that's considered an expert opinion
12 or not. I really don't know if that is
13 considered an expert opinion.

14 Q. What is your birth date, sir?

15 A. [DELETED] 1943.

16 Q. And can I have your Social
17 Security number?

18 A. [DELETED]

19 Q. Are you presently employed?

20 A. Retired.

21 Q. You're retired. Who was your
22 last employer?

23 A. Last employer where I was
24 gainfully employed, I did something that was
25 a joint venture, where I didn't get paid, so

1 the last employer was really The American
2 Tobacco Company.

3 Q. When was that?

4 A. My position ended when the company
5 was sold, which it was on December 22nd,
6 1994, and I was on salary continuation for a
7 period of time, and then started collecting a
8 pension at age 55, which was two years ago.

9 Q. What was your position in 1994
10 when the company was sold?

11 A. Executive vice president and chief
12 operating officer.

13 Q. Do you do any consulting work?

14 A. Just a little bit relative to
15 American Tobacco, a few times a year, once
16 or twice a year. That's it.

17 Q. For whom?

18 A. I do it, I guess, for Brown &
19 Williamson, but it's through attorneys. It
20 is indirectly for Brown & Williamson.

21 Q. For which attorneys do you work?

22 A. Well, usually it's -- the other
23 cases I've been involved with were handled by
24 Chadbourne and Parke out of New York. This
25 case is obviously being handled by another

1 firm.

2 Q. What case was that?

3 A. Excuse me?

4 Q. What case is that? You said the
5 other case --

6 A. The other cases that I was
7 involved in --

8 Q. Oh, I see.

9 A. -- were handled by Chadbourne.

10 Q. Now, I didn't ask you earlier.

11 Are there cases that you're currently
12 involved with, other than this one?

13 A. No. I've spoken to attorneys on
14 cases, but I am not involved in them.

15 Q. Is there one or two particular
16 attorneys at Chadbourne and Parke that you
17 deal with regularly?

18 A. Well, I know a slew of the
19 attorneys, because Chadbourne and Parke was
20 the law firm that was on retainer by The
21 American Tobacco Company; and as chief
22 operating officer and also when I was in
23 charge of marketing and sales, I dealt over
24 the last 20 years with two or three
25 attorneys. So I know a number of the

1 attorneys.

2 Q. How were you compensated when you
3 were retired?

4 A. Pension.

5 Q. And you said that started just
6 last year, two years ago?

7 A. First I received salary
8 continuation, and then when I reached 55 I
9 started to draw a pension.

10 Q. Did you receive any other
11 severance package?

12 A. Yes. When I -- I obviously
13 received -- I had profit-sharing, which
14 really wasn't a severance package. It is
15 something I had accrued based on my 32 years
16 of service with the company. And I received
17 -- sure, I received salary, so much per
18 month for every year of service type of
19 thing.

20 Q. Can you explain to me how the
21 profit-sharing worked?

22 A. Every employee of American Tobacco
23 was a member of a profit-sharing plan. And
24 a certain percentage of the profits of the
25 company were put into profit-sharing for the

1 employees, and it was a percentage, so,
2 therefore, the higher the salary, the more
3 dollars went into it. And it really was
4 meant to be deferred until you retired to
5 use it to supplement your pension. It was a
6 traditional profit-sharing plan like a lot of
7 the Fortune 500 companies have.

8 Q. So the more money, the more
9 profit that American Tobacco made, the more
10 money went into the profit-sharing program?

11 A. Well, there was a cap. There was
12 a percentage cap. That had to do with IRS
13 regulations and what have you. There was a
14 limit to what would go in there.

15 Q. But certainly a direct correlation
16 between the profits of American Tobacco and
17 the amount that went into the profit-sharing
18 program?

19 MR. BASSETT: Object to the form.

20 THE WITNESS: Up to a point. Up
21 to a point. Obviously if it was
22 unprofitable in a given year, it would be
23 very little. But a profitability up to a
24 point you could put money in there. After
25 that you couldn't. There was a cap as to

1 how much you could put in there, which would
2 be controlled by the IRS. There were
3 government regulations on benefit packages,
4 and there still are, I'm sure.

5 Q. (By Mr. Gruenloh) The second
6 part of your severance package that you
7 talked about, you said you received a certain
8 dollar amount each year that you were
9 employed by American; is that right?

10 A. Well, yes. I received a -- I
11 guess it was called a stay bonus and then I
12 received a salary continuation until I was
13 55, at a reduced point, at a reduced amount.

14 Q. You said a stay bonus?

15 A. Yes. It's a little bit
16 complicated. You had American Tobacco, the
17 sale was announced to B.A.T. in February of
18 1994. The transaction was not completed
19 until December, because it was contested by
20 the FTC. And because of that, we didn't
21 know whether or not the sale was going to be
22 consummated, and stay bonuses were given to
23 employees if they would stay rather than, in
24 quotes, abandon the ship, not knowing if they
25 were going to have a job in six or eight

1 months.

2 Q. So you got some money for
3 sticking around while the company wrapped up?

4 A. Everybody did. Everybody did.

5 Q. Can you disclose how much you
6 received or is there some confidentiality to
7 that?

8 A. There may be. I'm not sure. I
9 would have to check the letter of agreement.
10 I don't really recall. It was relative to
11 my salary. You know, I really don't know.
12 I would have to look at the letter of
13 agreement. I don't know what I'm allowed to
14 say relative to that or not.

15 Q. But in addition to the stay
16 bonus, did you receive any other
17 compensation, aside from the profit-sharing,
18 as severance when you left American?

19 A. I'm not sure exactly what you
20 mean. I received a stay bonus. I received
21 salary continuation for a period of time, and
22 then I started collecting my pension. I
23 received my profit-sharing. And from
24 American Brands, the day of the sale was
25 consummated, our stock options were cashed

1 out, because I think it was a legal issue
2 that, as of the day -- when the day the
3 sale was consummated, American Tobacco was a
4 wholly-owned subsidiary of American Brands.
5 You were no longer an employee of American
6 Brands, so you could no longer have American
7 Brand stock options, so that was cashed out.

8 Q. What was your salary in 1994?

9 A. Salary, if I recall, was 210,000.

10 Q. And that continued for how many
11 years before pension took over?

12 A. That considered for two years, and
13 then I received a reduced benefit until 1995,
14 March, when I turned 55.

15 Q. Do you remember roughly the value
16 of your stock options when they were cashed
17 out in American?

18 A. They were -- the actual value to
19 me, because you received the difference
20 between, obviously, the market value and what
21 they were issued at, most of the options
22 were, I guess, in the red. It was about
23 \$70,000, \$75,000.

24 Q. Did you have stock in any other
25 tobacco company at that time or now?

1 A. No, I did not.

2 Q. Let back up and discuss your
3 education.

4 Can you tell me what degrees you
5 obtained?

6 A. One, a Bachelor of Arts and
7 History.

8 Q. Where did you obtain that degree?

9 A. Pace University.

10 Q. What year did you graduate?

11 A. 1975.

12 Q. Any postgraduate courses or
13 anything that you've taken since then?

14 A. No.

15 Q. Have you received any other
16 specialized training in any areas?

17 A. By specialized, you mean
18 through --

19 Q. Well, that is a little bit broad.
20 Let's break it down.

21 Have you received any specialized
22 training in any medical areas?

23 A. No, I have not.

24 Q. What about in industrial hygiene,
25 have you received any specialized training in

1 industrial hygiene?

2 A. No, I have not.

3 Q. Do you know what industrial
4 hygiene is?

5 A. No. It would be a layman's
6 guess. I do not know.

7 Q. Have you received any specialized
8 training in science?

9 A. No, I have not. My background is
10 marketing.

11 Q. What about tobacco, have you
12 received any specialized training in tobacco?

13 A. No, I have not.

14 Q. Can you tell me what your first
15 job was?

16 A. My first job, you mean going back
17 to the beginning of American Tobacco, which
18 is 32 years?

19 Q. I know this is a bit tedious, but
20 let's start first job out of high school, if
21 you can.

22 A. Oh, geez. First job out of high
23 school, I worked in Bloomingdales, which is a
24 department store -- was a department store.
25 I guess it still is in New York.

1 Q. Selling tobacco?

2 A. No. I was a supply clerk.

3 Q. How about after that?

4 A. Milliken-Willis as an adjuster.

5 Q. What type of an adjuster?

6 A. Oh, you dealt with what they
7 called, I believe we used to call them
8 spongers, the wholesalers, and you would deal
9 with the complaints on shrinkage of material
10 or something.

11 Q. When did you begin that job?

12 A. Well, it was for a short period
13 of time. I mean, I went to American
14 Tobacco, and I was 19 and a half. So maybe
15 I was 18 and a half, something like that.

16 Q. And then I take it your next job
17 was with American Tobacco?

18 A. Yes, 1963, February.

19 Q. What position was that?

20 A. An order department clerk.

21 Q. What were your job
22 responsibilities?

23 A. Processing orders, pre-year 2000
24 computer systems with the old Univac
25 computers and cards and pencils and papers

1 and what have you.

2 Q. Processing orders for wholesalers?

3 A. For wholesalers, distributors, the
4 customers of American Tobacco, which were
5 wholesale distributors and direct retail
6 chains, the Safeways, for instance. Safeway
7 may buy cigarettes direct for their thousand
8 stores, but most of the business, especially
9 at that time, was through distributors.

10 Q. How long were you in that
11 position?

12 A. Oh, maybe a year.

13 And from there I went to the
14 service department as a supervisor dealing
15 with distributor complaints on shortages in
16 shipment, damage in shipment, that kind of
17 thing.

18 Q. Okay. Where did you go from
19 there?

20 A. And then in January of 1970, I
21 was in that area that I just mentioned for
22 about seven years, and I was transferred to
23 American Cigar, which is another division of
24 American Brands, as assistant manager of the
25 sales department for the cigar division. And

1 basically administrating the sales organization
2 for the cigar group.

3 And then in 1975, if I recall, it
4 could be give or take a year, I was
5 transferred into the marketing area for
6 American Cigar as the assistant product
7 manager for the cigar line.

8 Q. What were your job
9 responsibilities in that position in 1975?

10 A. It was advertising and promotion
11 for the Antonio y Cleopatra, and Roytan, and
12 La Corona cigars, and a few smoking tobaccos
13 that were handled by the cigar division.

14 Q. In 1975, did your position relate
15 to the marketing or advertising of cigarettes
16 at all?

17 A. No. Not until 1979.

18 Q. I'm sorry, again, what was the
19 name of your position in 1975? You were
20 assistant product manager?

21 A. Assistant product manager. There
22 was only one, so you didn't specify for what
23 product.

24 Q. Was there an assistant product
25 manager or product manager for American

1 cigarettes at that time as well?

2 A. Well, there were two separate
3 divisions, and there were product managers in
4 American Tobacco and there was a product
5 manager in American Cigar. And I don't
6 recall if there were assistant product
7 managers in American Tobacco. It was a very
8 small staff. Both divisions were very small
9 in staffing.

10 Q. So there was more than one
11 product manager in the cigarette division?

12 A. Yes. And there was one in the
13 cigar division. And they were separate
14 operating identities, separate profit lines
15 and expense lines. They did not work
16 together.

17 Q. I'm sorry, the cigar division and
18 the cigarette division were separate entities?

19 A. Separate entities, profit --
20 different operating centers in the same
21 building.

22 Q. You said there was more than one
23 product manager for the cigarette division.
24 Were the product managers split up? Was
25 there a product manager for each brand?

1 A. No, it would vary. There would
2 be a product manager, for instance, might
3 handle four or five different brands. It
4 depends on the activity for the brand.

5 In other words, there may be a
6 product manager for Pall Mall, may have also
7 handled at that point in time Silva Thins,
8 and we had a number of brands that came and
9 went very quickly like Iceberg and there was
10 a brand called Twist and Colony.

11 So depending on the level of
12 activity would determine how many brands a
13 product manager would handle.

14 Q. Do you remember about how many
15 product managers there were at that time in
16 the cigarette division at that time?

17 MR. BASSETT: Object to the form.

18 MR. GRUENLOH: Let me repeat the
19 question.

20 Q. (By Mr. Gruenloh) Do you
21 remember about how many product managers
22 there were at that time in the cigarette
23 division?

24 MR. BASSETT: Same objection as
25 before.

1 THE WITNESS: No. I would know
2 how many there were later. I assume -- I
3 can tell you there weren't many, but I can't
4 tell you if there were two, three or four.

5 Q. (By Mr. Gruenloh) Who would
6 those product managers, in the cigarette
7 division, have reported to?

8 A. Titles change over time. I'm not
9 sure if it would have been marketing manager,
10 might have been the title at that time.

11 Q. What was your next position after
12 assistant product manager of the cigar
13 division?

14 A. July 1, 1979 was transferred to
15 The American Tobacco Company as assistant
16 product manager for Tareyton cigarettes.

17 Q. Can you tell me what your job
18 responsibilities and duties were in that
19 position?

20 A. Again, it was advertising and
21 promotion. Mostly the print promotions,
22 which would be bounce-back offers,
23 self-liquidators with people you could mail
24 in and receive something. That was basically
25 it.

1 Q. Okay. How long did you hold that
2 position?

3 A. Well, it was for a short period
4 of time, and then I was promoted to product
5 manager for Tareyton.

6 Q. When were you promoted to product
7 manager?

8 A. Oh, it was probably within six
9 months. I don't recall exactly. We're
10 going back quite a few years here.

11 Q. And you said product manager of
12 Tareyton?

13 A. Initially, yes.

14 Q. So sometime in 1979 or early
15 1980, you were promoted to product manager of
16 Tareyton?

17 A. That's correct.

18 Q. Let's go to your first position
19 in 1979 with Tareyton, when you were the
20 assistant product manager; correct?

21 A. Okay. That is correct.

22 Q. Did you deal at all with Carlton
23 cigarettes during that time period or was it
24 only with Tareyton?

25 A. Well, you helped out. There

1 were, at that point in time, when I went
2 back to American Tobacco, there were three
3 product managers. So you would fill in and
4 help as needed, even though you were assigned
5 to a particular brand.

6 If somebody went on vacation, for
7 instance, being American Tobacco did not have
8 this huge staff of people, you would help
9 and sit down and fill in.

10 Q. Could you split up the percentage
11 of your work that you worked only on
12 Tareyton and then that on other brands, aside
13 from Tareyton?

14 A. It would have been mostly on
15 Tareyton, obviously.

16 Q. Ninety percent on Tareyton?

17 A. It's all hypothetical. I mean,
18 mostly. I don't know if it was 90 percent
19 or 80 percent. I really don't recall.
20 Again, it was a small group. You had three
21 product managers. I was the only assistant
22 -- when I became a product manager, there
23 was still only three. So obviously the main
24 focus was your brand, but you worked with
25 the other two product managers because you

1 had to coordinate your activities.

2 You had to coordinate your
3 advertising schedules. You had to coordinate
4 your promotional time through the sales
5 organization; which brand is going to be
6 worked by the sales organization and put on
7 display, primary display, during a given
8 period of time. So you would work together,
9 but your main focus, obviously, was on your
10 brand.

11 Q. So it would be correct to say
12 that -- I'm sorry -- strike that.

13 From 1979 to when were you the
14 product manager of Tareyton? How long did
15 you hold that position?

16 A. Until sometime in the latter part
17 of 1980.

18 Q. Okay. So from July of 1979 to
19 the latter part of 1980, would it be correct
20 to say that your focus at American Tobacco
21 was working on Tareyton?

22 A. That's correct.

23 Q. Was there a product manager at
24 that time, at that same time period, 1979,
25 1980, for Carlton cigarettes?

1 A. Yes, there was.

2 Q. Who was that person?

3 A. Hank Bahrenburg.

4 Q. Bahrenburg. Do you know how to
5 spell his last name?

6 A. It's a guess.

7 Q. Your guess would probably be
8 better than mine.

9 A. B-A-H-R-E-N-B-U-R-G, but it's a
10 guess.

11 Q. Do you know where Hank -- how do
12 you pronounce that, Bahrenburg?

13 A. Bahrenburg.

14 Q. Bahrenburg. Do you know where
15 Hank Bahrenburg is now?

16 A. The last time I spoke to him,
17 which was probably six years ago, he lived
18 in Connecticut someplace. I don't know where
19 he lives today. He has been retired for
20 seven, eight years.

21 Q. When you took the position in
22 1980 as product manager of Tareyton, can you
23 tell me your job responsibilities and duties?
24 Were they roughly the same as when you were
25 assistant product manager?

1 A. The duties, yes, are roughly the
2 same. What happens is you have more
3 responsibility. In other words, you can make
4 more of the decisions. Sure. It had to do
5 with the scheduling, the advertising and
6 developing the print campaigns, working with
7 the ad agencies and working with the sales
8 organization to develop and schedule these
9 in-store sales promotional efforts.

10 Q. When you were the product manager
11 of Tareyton, did you work on any consumer
12 research issues?

13 MR. BASSETT: Object to the form.

14 THE WITNESS: I'm not sure
15 exactly what that means, consumer research
16 issues.

17 Q. (By Mr. Gruenloh) Do you know
18 what consumer research is?

19 A. I know what it can be. I mean,
20 but issues, I'm not sure what you mean by
21 issues.

22 Well, to answer the question the
23 best I can, at that point in time, American
24 Tobacco, the senior management of the
25 company, did not believe in consumer research

1 of any kind.

2 Q. Who didn't?

3 A. The man who was the president of
4 the company, Bob Hyman. So there was really
5 next to no research during that period. And
6 we didn't start doing consumer research of
7 any kind until sometime in the early '80s.

8 Q. Can you define consumer research
9 for me?

10 A. Well, there's different types of
11 consumer -- when I was talking about consumer
12 research, first of all, to clarify, I was
13 talking about consumer research from the
14 marketing perspective.

15 Research did product testing,
16 dealing with blends, on a regular basis.
17 That was probably all through the '70s. But
18 consumer research from the marketing
19 perspective in terms of advertising and
20 promotion, we didn't do that until the '80s,
21 which is when you would begin doing focus
22 groups and portfolio tests on advertising and
23 so forth and so on. That was not until the
24 '80s. But product research, per se, dealing
25 with blends and what have you was ongoing

1 for a long time. That was handled through
2 research with the reports obviously being
3 issued down there and then coming up to New
4 York.

5 Q. Okay. So focus groups, surveys,
6 and pollings are all types of consumer
7 research; correct?

8 A. Those are all types of consumer
9 research, sure. Telephone studies, sure.

10 Q. And you're telling me that
11 American didn't do any of those things until
12 the early '80s?

13 MR. BASSETT: Object to the form
14 of the question.

15 THE WITNESS: I'm saying we
16 didn't do that during the '70s when Hyman
17 was the president. They had done them
18 earlier. We continued doing product testing,
19 obviously, for quality control reasons and
20 maybe change in blends and things like that.

21 But dealing with testing,
22 advertising, per se, dealing with testing new
23 package designs and so forth, there was
24 really none of that during the '70s, that
25 I'm aware of.

1 If it was, it was very, very
2 minor. It wasn't on an ongoing basis.

3 Q. (By Mr. Gruenloh) You said you
4 did do product testing though. What's the
5 difference between product testing and
6 consumer research?

7 A. Well, there may not be any, but I
8 was looking at it from a marketing
9 perspective, what I would have handled versus
10 what would have been done through research.

11 The product testing was done
12 through research. And again, it was usually
13 for blending to see if one was better than
14 another.

15 And being I'm not in that
16 business, I wouldn't know, except by taste,
17 which one is better than another or how you
18 made one from another, what the differences
19 were. So that was really handled through
20 research.

21 Q. Tell me how American Tobacco did
22 product testing.

23 MR. BASSETT: Object to the form
24 of the question.

25 THE WITNESS: Well, we used -- I

1 don't know. They used Southeast Institute of
2 Research for the product testing.

3 Q. (By Mr. Gruenloh) Did they do
4 focus groups for product testing?

5 A. They -- I don't recall. They may
6 have occasionally. Southeast Institute of
7 Research was the bellwether for most of the
8 product testing. There may have been some
9 focus groups, but that would have been
10 qualitative. That wouldn't really have been
11 quantitative. I'm sure that the Southeast
12 Institute of Research, their studies were
13 used more for the blend development and
14 product development.

15 Q. The Southeast Institute of
16 Research was employed by American Tobacco to
17 do their product testing?

18 A. It was an outside supplier, and
19 they did, to the best of my knowledge, at
20 least during the latter years, they did most
21 of it. I don't know if we used anybody
22 else.

23 Q. What do you mean they were an
24 outside supplier? That service was just
25 out-sourced; is that what you mean by that?

1 A. Yes. It's an independent company.

2 Q. Do you know if the Southeast
3 Institute of Research did surveys for product
4 testing, for the purpose of product testing?

5 A. What exactly do you mean by
6 service? What exactly -- what exactly it --
7 I'm not sure exactly what you mean.

8 Q. Well, do you know what a survey
9 is?

10 A. I know what it can be, but I'm
11 not sure what you mean by a survey for
12 product testing. Do you mean to find
13 individuals that you were going to test the
14 product with? I'm not sure exactly what the
15 question is.

16 Q. Did the Southeast Institute of
17 Research ever conduct surveys of consumers to
18 determine whether they enjoyed certain brands
19 over others?

20 A. I don't know. We had -- I mean,
21 there was research when we would test our
22 products against other products to see how
23 they compared.

24 Q. How was that done? Was that done
25 in-house or was that done --

1 A. It could be done both ways. It
2 could be done in-house, but if you wanted
3 something that was more measurable, you would
4 use an outside research firm like Southeast
5 Institute of Research, and you could do it
6 with blind packages, for instance, and ask
7 the consumer which cigarette they liked
8 better and why. And then you could also do
9 it branded and see if there is a difference
10 in the perception, which, in many cases,
11 there was; the difference in perception once
12 you see the brand versus when it's in a
13 blank package.

14 Q. Now, was that done?

15 A. That's been done, sure.

16 Q. Was that done in the time period
17 that we're talking about now, which was the
18 late '70s, early '80s?

19 A. Oh, yes. Yes.

20 Q. Was that done by the Southeast
21 Institute of Research or was that done by
22 American Tobacco in-house?

23 A. That research of that -- that
24 type of research would be done, really we
25 would always use an outside supplier. The

1 only thing you could do in-house is use an
2 in-house panel, which really just gives you
3 an indication if you're on the right
4 direction. But you would go outside to use
5 -- and use an outside firm to run the
6 research for you.

7 Q. Are you aware of any specific
8 studies or surveys, such as that, that were
9 done? Do any specific surveys come to mind?

10 A. We did -- my next job after that
11 was new products, product manager, sometime
12 in 1980. And I was very actively involved
13 in the launch of Lucky Strike filters. And
14 we did a lot of research, testing of that
15 product against Marlboro, Winston, and Camel
16 filter.

17 Q. You said you tested it against
18 those. How did you test it against those
19 other brands?

20 A. It would be a blind testing. You
21 would do a -- it would be handled through
22 Southeast Institute of Research, and consumers
23 would receive -- agree to receive a certain
24 amount of packs of cigarettes and smoke them
25 and talk about -- give their comments on the

1 taste qualities, smoothness, mildness,
2 harshness, whatever have you; and you would
3 compare it against a competitor's product
4 that you were also testing.

5 Q. Okay. Now, pretend I don't know
6 anything from that process, which isn't far
7 from the truth, and take me from step one
8 through the last step.

9 Did you bring the consumers into
10 your testing facility?

11 A. No. They would be doing it at
12 home. It would be done through the mail.

13 Q. Let me stop you there. How did
14 you determine which consumers would test the
15 products?

16 A. Southeast -- the research firm
17 would identify smokers of a particular brand,
18 and they would ask the smoker if they would
19 be interested in participating in a test.
20 And if they agreed to participate in the
21 test, then they would be sent the product
22 and the questionnaires to fill out and
23 evaluate.

24 Q. Then what was the next step in
25 that process?

1 A. Take the data that comes back and
2 see how your product scored, knowing that
3 when you introduced a new brand, usually you,
4 in your own mind, at least you thought you
5 knew which smokers -- that smokers of which
6 brand would be interested in it. So you
7 wanted to see how your brand did. And if
8 it scored well, then you would say, okay,
9 we'll stick with the blend that we have and
10 we'll proceed to developing the product for
11 introduction.

12 Q. And that was done in the early
13 '70s and in the -- I'm sorry, the late '70s
14 and early '80s?

15 A. And early '80s, yes.

16 Q. And you believe that process is
17 different than consumer research?

18 MR. BASSETT: Object to the form.

19 THE WITNESS: No. Again, I
20 didn't say that. I was thinking of it in
21 terms -- that is consumer research. But I
22 was thinking of it in terms of in the
23 marketing end of the business, what I
24 specifically would have done, the research or
25 coordinated the research versus having

1 research coordinated and giving us the
2 results.

3 Q. (By Mr. Gruenloh) Okay.

4 A. That's all I meant.

5 Q. Was there someone at Southeast
6 Institute of Research who you dealt with
7 during that time period?

8 A. No. The information came to us
9 -- I would deal with research.

10 Q. You dealt with Southeast
11 Institute's research?

12 A. No. I dealt with our research
13 department, who coordinated the research, the
14 product research. They also created the
15 product.

16 Q. Okay. So is it correct to say
17 that your R&D department then would take
18 Southeast Institute's findings and then relay
19 them to you in a memo or something like
20 that?

21 A. That's correct; with their
22 conclusions or their recommendations. Then
23 it would be -- decisions would be made after
24 that.

25 Q. Did you see the Southeast

1 Institute studies themselves or did you only
2 see R&D's interpretations of the studies?

3 A. No. I saw the Southeast
4 Institute studies as well.

5 Q. And from looking at those
6 Southeast Institute studies, do you remember
7 any of the names of the directors or any of
8 the people at Southeast Institute of Research
9 who conducted those studies?

10 A. No. I saw their data. It was
11 in tabulated form. So -- and the answers to
12 questions. I didn't get a report from the
13 Southeast Institute. The report was from our
14 people. So I didn't see any name for
15 Southeast Institute of Research.

16 Q. At that time, the late '70s again
17 and the early '80s, who in the R&D
18 department was sending you up this data?

19 A. Through most of that period, the
20 person I dealt with was Bob Sprinkle, who,
21 at that point, I guess he was -- his title
22 might have been research director.

23 Q. Okay. What was your next
24 position after the product manager of
25 Tareyton in 1980?

1 A. I then became product manager of
2 new products.

3 Q. When was that?

4 A. Sometime in 1980.

5 Q. In the latter part of 1980?

6 A. Again, we're talking 20 years ago.
7 It's your guess is as good as mine. I'm
8 not sure. It was sometime in 1980.

9 Q. Okay.

10 A. And then shortly after that --

11 Q. I'm sorry, let's stop there.
12 What were your responsibilities as product
13 manager of new products?

14 A. Well, it was new product
15 development; and the primary focus at that
16 point in time was on Lucky Strike filters,
17 which was launched in test market in 1981.

18 Q. Did you deal at all with Carlton
19 cigarettes in your position as new product
20 manager?

21 A. Didn't develop any new Carlton
22 cigarettes. The knowledge I have there,
23 would be, again, because you were just
24 talking three people, and we still had the
25 Phillip's system. We were -- you had myself

1 handling new products and you had one
2 gentleman handling Pall Mall and a gentleman
3 -- Hank was still there in 1981, obviously,
4 handling Carlton, and a gentleman handling
5 Pall Mall.

6 Q. And Mr. Bahrenburg was the person
7 who dealt with the new product development of
8 Carlton as well; is that correct?

9 MR. BASSETT: Object to the form.

10 THE WITNESS: If there would have
11 been any, he would have dealt with it.

12 Q. (By Mr. Gruenloh) From your
13 position as products manager of new products
14 in 1980, where did you go then?

15 A. Then the sequence goes very
16 quickly, and it would be difficult to
17 separate some of these by the years probably,
18 maybe, but senior product manager; and then
19 very shortly after that to group product
20 manager.

21 Q. All right. When did you become
22 senior product manager?

23 A. Again, this is a little bit of a
24 guess, because it went very quickly during
25 that period of the '80s. I'm not exactly

1 sure. It could be '84, somewhere in that
2 area.

3 Q. So you were the product manager
4 of new products from 1980 until about 1984?

5 A. Or maybe '83. I didn't lose
6 responsibility for the brands I had or
7 actually the new products. The title was
8 just changed to senior product manager. So
9 the brands I was working on, I still worked
10 on, and I still handled new products. The
11 title was just changed as a promotion to
12 make you a senior product manager versus a
13 product manager.

14 Q. Okay. Let's go back a second.
15 Your position as the product manager of new
16 products, who did you report to?

17 A. I reported to the -- I guess
18 today you would probably call it a marketing
19 manager. I think in those days he was still
20 called advertising manager. It was a
21 marketing manager.

22 Q. Do you know the person's name?

23 A. Yes. Bill Moore.

24 Q. All right. And when you became
25 senior product manager in 1983 or '84, how

1 were your job responsibilities different than
2 when you were the product manager of new
3 products?

4 A. Not really that much more
5 different. It is just that, again, you had
6 more responsibility, more authority. The --
7 really the next significant change was the
8 promotion when I became group product
9 manager, because then you were given more
10 brands to oversee. And that was right after
11 that.

12 You know, they were very close
13 together. There is probably six months'
14 difference between senior product manager and
15 group product manager.

16 Q. Who was your supervisor when you
17 were the senior product manager?

18 A. The same person.

19 Q. Did you deal at all with Carlton
20 cigarettes when you were the senior product
21 manager?

22 A. Again, only as a fill-in or
23 working together, because it was still the
24 same three people.

25 Q. When did you become the group

1 product manager?

2 A. Shortly after senior product
3 manager.

4 Q. '83, '84?

5 A. '84, '85, somewhere in that area.

6 Q. Who was your supervisor then?

7 A. Again, Bill Moore.

8 Q. What were your job
9 responsibilities and duties in that position?

10 A. Again, it was the -- I had a
11 number of product managers working for me at
12 that point, and it was again Lucky Strike
13 was still one of the main focuses of the
14 company. So it was Lucky Strike filters,
15 Pall Mall, and a number of newer brands
16 which I don't even recall because they didn't
17 go anywhere. They were small brands. I
18 think Malibu might have been involved at that
19 point. I'm not sure.

20 Q. Did you work at all with Carlton
21 cigarettes at that time?

22 A. Again, limited. I'm not even
23 sure who handled Carlton at that point. We
24 started hiring new people and moving people
25 around. The offices were moved from New

1 York to Connecticut, and there was a lot of
2 shuffling of people and new people brought
3 in. And over the next number of years,
4 product managers were rotated very quickly
5 through brands.

6 Q. Do you know if Mr. Bahrenburg was
7 still responsible for Carlton cigarettes at
8 that time?

9 A. It's around that time, and I
10 don't recall, I think it was right after we
11 moved to Connecticut, that he went into
12 export.

13 Q. Do you know who would have taken
14 on responsibility for Carlton cigarettes at
15 that time?

16 A. I really don't recall which one
17 of the people that was hired was handling it
18 at that point in time.

19 Q. So a new product manager was
20 hired to --

21 A. We brought in people from the
22 outside, yes. A number of new employees.

23 Q. What was your next position after
24 group product manager?

25 A. After that I went over to the

1 sales side, and I guess that was in, oh,
2 probably '87 or -- '87 or '88, mid '87, '88,
3 as executive sales director.

4 And the duties there were the
5 responsibility for all in-store sales
6 promotion for all the company's brands, and
7 sales administration, responsibility of
8 managing the sales force.

9 Q. When I asked you a little while
10 ago about your job responsibilities when you
11 were the assistant product manager, the group
12 manager, it seemed to be consistent all the
13 way through that you dealt with the same
14 things, the scheduling of promotions, the
15 development of promotions, you said you dealt
16 a little bit with sales, you said in-store
17 promotion. Are all of those things correct?

18 A. A little bit with in-store
19 promotion. You worked with the sales
20 department for the scheduling. The sales
21 promotions that were done during that period
22 were basically buy one, get one free type
23 offers, or buy a carton of cigarettes and
24 get a pack free.

25 So there wasn't a lot done as far

1 as premiums and in-store activity. So the
2 promotions that I handled as a product
3 manager, some of them dealt with the in-store
4 promotion, but a lot of them dealt with
5 media promotions, bounce-back offers and
6 magazine ads and things like that.

7 Q. Before we go into sales, your
8 position in sales, was there anything else,
9 when you were a product manager or assistant
10 product manager or group product manager,
11 that dealt with the marketing of cigarettes?
12 Any other activities other than those that we
13 just mentioned?

14 MR. BASSETT: Object to the form
15 of the question.

16 THE WITNESS: Well, as I told
17 you, in the '80s we started doing focus
18 groups for our advertising and we dealt with
19 package design. We didn't really get into
20 that again until into the '80s with the
21 change in management.

22 Obviously we did, you know,
23 testing or advertising, developed new ad
24 campaigns, and in-store promotion. Basically
25 I guess that was it.

1 Q. (By Mr. Gruenloh) When did you
2 start doing research on package design?

3 A. You did research on package design
4 basically when you were either developing new
5 products or you were -- or there was
6 somebody that felt it was time to revise a
7 package, that it looked too old.

8 A good example would be if you
9 look at Campbells Soup today versus 1920, I'm
10 sure the difference would be shocking; but it
11 was evolutionary over the period of time.
12 And occasionally little nuances would be done
13 to packaging, change the style of the
14 lettering, for instance, that type of thing,
15 the tone or the color. But the major
16 package design was for new product
17 development.

18 Q. I'm sorry, that was a poorly
19 worded question. In what year did you begin
20 doing work on package design?

21 A. Personally?

22 Q. You personally.

23 A. Well, we started doing some
24 package design even in Tareyton in 1979.

25 Q. Was Mr. Hyman still with the

1 company at that time?

2 A. Package design was ongoing.

3 Q. Are you aware of when American
4 first started doing package design, research
5 into package design?

6 A. Research into package design?

7 Q. Yes.

8 A. I'm not sure how much research
9 was always done on package design. A lot of
10 times the package was designed by the package
11 designer and the decisions on whether to go
12 with a particular package or not was not
13 based on research. It was based on one or
14 two people's opinion. It wasn't always
15 researched.

16 The company historically did a lot
17 of package design in the Lucky Strike
18 packages. It's still considered one of the
19 most famous package designs in the world, and
20 that goes back to the '40s.

21 Q. Did American have a particular
22 department or group of people that worked
23 specifically on package design?

24 A. No. Package designers, number
25 one, were independent contractors, and they

1 would work with the product manager whose
2 product was being either redesigned or if it
3 was a new product, whoever was handling the
4 development of the new product.

5 Q. Okay. In 1987, you went to
6 sales. What was name of your position in
7 1987?

8 MR. BASSETT: Actually, would this
9 be a good time to take a break?

10 MR. GRUENLOH: That is fine.

11 MR. BASSETT: We have been going
12 close to an hour.

13 THE VIDEOGRAPHER: We are off the
14 video record at 10:51.

15 (A recess was taken.)

16 THE VIDEOGRAPHER: We are on the
17 video record at 10:59.

18 Q. (By Mr. Gruenloh) Before the
19 break you were beginning to tell me about
20 your position that you took in sales in
21 1987. Could you tell me about that?

22 A. Well, I was responsible for the
23 in-store sales promotion for all our brands,
24 the promotion that will be conducted by the
25 sales organization. That was development in

1 conjunction with all of the various product
2 groups, scheduling, timing, the length of the
3 effort, that type of thing. And also sales
4 administration activities would be -- which
5 will be the expenses for the sales
6 organization, the budgeting, anything to do
7 with administration.

8 Q. How long were you in that
9 position?

10 A. A year, and then I guess I was
11 promoted to vice president sales operations.
12 Basically the same duties, but more authority
13 and responsibility.

14 Q. Before we go to that position,
15 can you tell me who your supervisor was in
16 that first sales position?

17 A. Don Johnson.

18 Q. Johnson?

19 A. Johnson.

20 Q. Like the Miami Vice guy?

21 A. Right, exactly.

22 Q. And I'm sorry, what was the title
23 you held, the initial title you held in
24 sales?

25 A. Executive sales director.

1 Q. What year did you become the vice
2 president of sales?

3 A. Vice president of sales
4 operations. And we also had a vice
5 president of field sales that was in charge
6 of the manpower.

7 That, I guess, would have been a
8 year later. So that would have been '88.

9 Q. Who was your supervisor then?

10 A. Don Johnson. To simplify that,
11 Don Johnson remained my supervisor for the
12 remaining tenure with the company.

13 Q. In either of those two positions,
14 did you deal with Carlton cigarettes?

15 A. Sure.

16 Q. In what capacity did you deal
17 with Carlton cigarettes?

18 A. Worked in developing in-store
19 promotions for the brand. Actually I had
20 sales promotional managers that did it, and I
21 oversaw it.

22 Q. Aside from developing in-store
23 promotions, did you do anything else related
24 to Carlton?

25 A. No, not really. All of the

1 research would have been handled through the
2 marketing end of the business, and now I was
3 in the sales end of the business.

4 Q. What do you mean by research?

5 A. Oh, focus groups on advertising.
6 If there were any packaging changes being
7 made.

8 Q. So you didn't deal with those
9 related to Carlton, the people in marketing
10 dealt with those?

11 A. Correct. When I was in sales,
12 the area of responsibility for the brands
13 would have been sales promotion. It would
14 have been developing and execution of sales
15 plans for the brands, the different types of
16 activity you would do in-store.

17 Q. Mr. Gesell, if there was a change
18 in packaging in the mid '80s of Carlton
19 cigarettes, would have you had anything to do
20 with that?

21 MR. BASSETT: Object to the form
22 of the question.

23 THE WITNESS: I would have been
24 aware of it, but I wouldn't have handled --
25 wouldn't have been involved in the

1 development of the change, no.

2 Q. How would you have been made
3 aware of it?

4 A. Well, depending on which function
5 at the time, if I was in sales, there was a
6 packaging change, you would be coordinating
7 with manufacturer, the roll out of the new
8 product and making sure that it got to
9 retail in a timely fashion and tried to move
10 stock on shelves so that you didn't have a
11 new style, old style, new style, old style.
12 You would move it around between retailers to
13 try to move the older style packaging out as
14 quickly as possible.

15 Q. So would it be accurate to say
16 that if there was a change in the packaging
17 of Carlton cigarettes during that time
18 period, the mid to late '80s, you would have
19 been involved with that only after the fact,
20 only after the packaging, the decision to
21 change the packaging were made?

22 A. That is correct.

23 Q. Now, you mentioned a second ago
24 in your position in sales that you did not
25 deal with focus groups, that that was dealt

1 with by the marketing folks; is that right?

2 A. That's right.

3 Q. During this time period, the mid
4 to late '80s --

5 A. It is the late '80s, really.

6 Q. Okay. Starting in 1987?

7 A. Yes.

8 Q. Okay. Did you deal at all with
9 any focus groups relating to Carlton
10 cigarettes?

11 A. Not in a -- it wasn't my
12 responsibility. I may have been invited to
13 a few as a guest, I might have gone to a
14 few. I don't recall. But occasionally I
15 would go to marketing activities as a guest.
16 So I would be informed of what was going on,
17 but it was not my responsibility.

18 Q. Do focus groups fit within the
19 broad characterization of consumer research?

20 A. Sure.

21 Q. During the late '80s, did you do
22 anything relating to consumer research for
23 Carlton cigarettes?

24 A. No, I did not.

25 Q. During the late '80s, did you do

1 anything relating to the marketing of Carlton
2 cigarettes?

3 A. If you exclude in-store promotion,
4 no.

5 Q. Can you define in-store promotion
6 for me so I know exactly what we're talking
7 about?

8 A. Okay. In-store promotion would be
9 a consumer going into a retailer. We could
10 pick one. Say a Wawa store. And again,
11 I'm talking for that period in time. I'm
12 not even sure what the industry does today.
13 I have been out of the business five years.

14 But in those days, you would be
15 able to put up a package display of
16 cigarettes on the counter and a company would
17 promote a particular brand at a particular
18 point in time, and there would be a display
19 of the cigarettes on the counter. And there
20 could be consumer offers associated with the
21 display.

22 It could be buy two packs of
23 Carlton and receive a free key chain, and
24 the key chain could have been with it. Or
25 there could have been tear-off pads for

1 bounce-back offers. Save four empty packages
2 of Carlton king and mail them in with this
3 coupon, and you'll receive a free calendar,
4 that type of thing. Those were the
5 promotions.

6 Q. Okay. What was your next
7 position after the vice president of sales
8 operations?

9 A. I was promoted, in 1991, to vice
10 president of marketing and sales.

11 Q. What were your job
12 responsibilities in that position?

13 A. I was responsible for all of the
14 marketing and sales activities of the
15 company.

16 Q. Again, did you deal directly with
17 Carlton cigarettes during that time period?

18 A. Well, I had a business director
19 that was running the brand, who would report
20 to me with his activities, and I would have
21 to approve any and all brands and sales
22 activities.

23 Q. Did that include the marketing
24 activities as well or did that just include
25 the sales end of it?

1 A. No. Marketing and sales
2 activities.

3 Q. What was your next position after
4 that?

5 A. The promotions went rapidly, so
6 the time frames, I'm not sure on exactly the
7 dates, but the responsibilities, though,
8 stayed the same.

9 I was promoted from vice president
10 of marketing and sales, to senior vice
11 president of marketing and sales, to
12 executive vice president of marketing and
13 sales.

14 Again, no real difference in the
15 job description. I just had a little bit
16 more authority. And then the last promotion
17 was roughly six months before the company was
18 sold when I was promoted to executive vice
19 president, chief operating officer.

20 Q. You said those promotions went too
21 quickly for you to tell me the years of when
22 each one of them came about?

23 A. I really don't recall. There may
24 have been eight months between one, and there
25 really was no difference in the job

1 descriptions, per se, between the vice
2 president of marketing and sales to senior
3 vice president of marketing and sales and
4 executive. I was still responsible for the
5 same activities. I just had more authority.

6 Q. That is a problem we should all
7 have, incidentally.

8 So roughly speaking, you were
9 employed by American Tobacco for about 30
10 years, from 1964 to 1994?

11 A. 1963 through 1994. So actually
12 it is almost 32 years. Thirty-one years,
13 ten months, actually.

14 Q. In your 32-year tenure, did you
15 ever have direct responsibility for control
16 of Carlton cigarettes?

17 MR. BASSETT: Object to form of
18 the question.

19 THE WITNESS: Well, obviously when
20 I was vice president of marketing, I had
21 direct control. I had direct control over
22 all the brands.

23 Q. (By Mr. Gruenloh) And that was
24 in 1991?

25 A. Correct.

1 Q. Were you directly responsible for
2 coming up with the ad campaigns, the
3 marketing slogans, doing the consumer research
4 for Carlton cigarettes in 1991, or did you
5 simply oversee someone else who was doing it?

6 A. The answer is I oversaw, but the
7 answer is there was no one person responsible
8 for coming up with. That was not the way
9 it was done. It was a joint venture, and
10 it was involving a team. It would have been
11 an advertising agency involved. It would
12 have been a brand manager involved. There
13 would have been input from a lot of
14 different places. No one person gets credit
15 for the development.

16 Q. Let me ask you about that. The
17 development of all those ideas I talked
18 about, marketing and so on, consumer
19 research, you said there would be a team set
20 up to do that.

21 A. People work as a team. They
22 wouldn't be officially -- you wouldn't set up
23 a team, but people would work as a team.
24 You would work in conjunction with a brand
25 manager. You would work with the advertising

1 agency, and there may also be a promotional
2 firm involved.

3 And you may even discuss it with
4 a sales promotional manager for that brand,
5 and then the product manager has a boss who
6 is at the end there the vice president,
7 brand management. And so a lot of people
8 working together and giving input.

9 Q. Okay. If we are talking about
10 consumer research and marketing of Carlton
11 cigarettes, wouldn't the leader of that team
12 -- and I understand it is the team is
13 somewhat intangible here, wouldn't the leader
14 of that team be the product manager of
15 Carlton cigarettes?

16 A. The product manager, sure, would
17 be the soldier on the line, so to speak,
18 sure. Sure.

19 Q. And you were never the soldier on
20 the line for Carlton cigarettes, were you?

21 A. No, I was not.

22 Q. Have you brought anything with you
23 to the deposition today?

24 A. No, I have not.

25 Q. Can you tell me, do you have a

1 filing system at your home or home office?

2 A. Oh, I don't have a home office.

3 No, I don't have a filing system.

4 Q. Do you have any tobacco documents
5 at your home?

6 A. Only what was sent to me in the
7 last few weeks to refresh my memory.

8 Q. Let me ask you, when you were the
9 vice president of marketing in American
10 Tobacco, do you remember what the document
11 retention policy was?

12 MR. BASSETT: Object to the form
13 of the
14 question.

15 THE WITNESS: Well, I don't
16 really recall what year that happened there.
17 At one point there was a restraining order
18 issued against, I guess, the industry. We
19 really couldn't throw anything out, and we
20 didn't.

21 But prior to that, companies --
22 most
23 documents had maybe a three-year cycle or
24 something. You couldn't keep every piece of
25 paper that you generated going back forever.

1 So there was a retention policy.
2 Some things maybe were three years. Some
3 things were maybe seven years. And we had a
4 filing department. And I don't recall which
5 documents were kept for which period of time.

6 Q. (By Mr. Gruenloh) Okay. Have
7 you met with any former or current tobacco
8 company employees in preparation for this
9 deposition?

10 A. No.

11 Q. Have you met with any lawyers in
12 preparation for this deposition?

13 A. Yes.

14 Q. Can you tell me who you met with?

15 A. Randy Bassett, who is --

16 Q. This handsome, young man sitting
17 across from me?

18 A. Right here.

19 MR. BASSETT: I object to that.

20 THE WITNESS: And the gentleman
21 sitting next to him, Tom Riley. And there
22 were a number of other attorneys, but they
23 were in and out of the room and I don't
24 recall any of their names.

25 Q. (By Mr. Gruenloh) Okay. When

1 did you meet with them?

2 A. Once about two weeks ago and
3 yesterday.

4 Q. What did you discuss?

5 A. A few weeks ago, actually I did
6 most of the talking. Just talking about the
7 company and the history. And yesterday,
8 well, we discussed, I guess, questions you
9 might ask, but I don't recall all the
10 questions.

11 Q. Did either Mr. Bassett or Mr.
12 Riley show you any documents?

13 A. The documents that they had sent
14 me a few weeks ago I had. I didn't have
15 them with me, but those are the documents, I
16 guess, that we discussed. It was share data
17 for the company.

18 Q. I'm sorry, what?

19 A. Share data, you know, how the
20 company's sales went during different periods
21 and some of the advertising.

22 I mean, a lot of it I was
23 familiar with and I had just asked to look
24 at it again as a refresher.

25 Q. And you haven't brought any of

1 that with you?

2 A. No.

3 Q. Aside from the share data and you
4 said some ads --

5 A. Yes, ads.

6 Q. -- were there any other documents
7 that you looked at in preparation for this
8 deposition?

9 A. There were some -- I asked for
10 some information on the competitive nature of
11 the industry back in the '70s, again, to
12 refresh my memory on the tar for just some
13 of the different brands. So I looked at
14 some of that data.

15 Q. Was that data in reports or in
16 memos?

17 A. It was in reports with listings
18 of cigarettes showing the tar and nicotine at
19 a given point in time.

20 Q. Do you still have those documents
21 that Mr. Bassett and Mr. Riley sent to you?

22 A. Yes.

23 Q. Have you been contacted by anyone
24 else regarding this deposition?

25 A. No, I have not.

1 Q. Has anyone encouraged you to
2 testify frankly in this deposition?

3 A. Well --

4 MR. BASSETT: Well, I object to
5 the form of the question.

6 THE WITNESS: -- I just assumed I
7 would testify honestly.

8 Q. (By Mr. Gruenloh) I assumed that
9 you were too. I'm just asking if anyone
10 either --

11 A. I don't think --

12 Q. -- former tobacco employees or any
13 of your lawyers had encouraged you to testify
14 frankly?

15 A. I don't think anyone felt that
16 was necessary.

17 Q. Okay. I assumed that you would.
18 I didn't mean to insult you in any way.

19 Had you ever been involved in any
20 investigation by the Department of Justice
21 against any tobacco company?

22 A. No.

23 Q. What about the FTC?

24 A. No.

25 Q. Have you ever given any assistance

1 to the FDA in its efforts to regulate
2 nicotine?

3 A. No.

4 Q. Are you aware of the FDA's
5 efforts to regulate nicotine?

6 A. I'm aware of it from the articles
7 I read, sure.

8 Q. What are you aware of?

9 MR. BASSETT: Object to the form
10 of the question.

11 THE WITNESS: I'm aware that the
12 FDA wanted to regulate nicotine, but I'm not
13 aware of exactly what that meant.

14 Q. (By Mr. Gruenloh) I understand
15 from your prior testimony this morning that
16 there was generally a team that was working
17 on the marketing efforts of Carlton
18 cigarettes, but I'm interested now in who
19 would have made the final decisions regarding
20 the marketing of Carlton cigarettes.

21 Can you tell me, during the '70s,
22 say 1975, who would have been responsible for
23 the final decision on an ad that went out
24 the door for Carlton cigarettes?

25 A. Yes, I can. At that point in

1 time, the company, the management was very
2 autocratic, and really all of the decisions
3 of any consequence were made by one man, and
4 this name was Bob Hyman.

5 Q. Where is Mr. Hyman now?

6 A. He's deceased.

7 Q. Same question, who made all of
8 the final decisions regarding the marketing
9 of Carlton cigarettes in the 1980s, let's say
10 1980?

11 A. The final -- we're talking
12 advertising, if I recall?

13 Q. Advertising. If an ad went out
14 the door.

15 A. Ad campaigns, final approval, was
16 always by the president of the company.

17 Q. And that was Bob Hyman?

18 A. In the 1980s, no. That was first
19 V.B. Lougee. And we went through four
20 presidents over the next 14 years.

21 Q. Do you remember who the president
22 was in 1985?

23 A. Yes. At that point in time, it
24 would have been Tom Hayes. You said 1985?

25 Q. 1985.

1 A. Yes. I think at that point he
2 had been promoted to president. If not, I
3 could be off by six months.

4 Q. How about 1990, same question?

5 A. 1990 would have been Charles
6 Mullen.

7 Q. So the president of marketing
8 wouldn't have been responsible for making
9 those decisions?

10 A. It was a very small company. The
11 office staff was very small. And the final
12 decision on all advertising, the president
13 had signed off on it.

14 Q. Can you tell me what the chain of
15 command would have been? Would it have been
16 the vice president of marketing, then the
17 president of marketing, and then the
18 president and CEO of the company; is that
19 correct?

20 MR. BASSETT: Let me object to
21 the form of the question in the context of
22 the question.

23 THE WITNESS: It depends on the
24 period of time. The title vice president
25 really didn't become a prolific title until

1 sometime in the '90s, early '90s, I guess.

2 You would have -- depending upon
3 the period of time, you would have had --
4 obviously it would initiate by the product
5 manager. Then it would be signed off by the
6 product manager's superior, whoever that
7 individual happened to be, and it would
8 literally go up the marketing ladder to the
9 president; with the last person in marketing,
10 whether it be, depending on the year, either
11 a vice president or director, depending on
12 the year.

13 Q. (By Mr. Gruenloh) Okay. Mr.
14 Bassett just pointed out the error in my
15 earlier question. Just to clarify, we're
16 talking about marketing decisions, the chain
17 of command for a marketing decision.

18 A. Well, you were talking about an
19 ad in advertising.

20 Q. An ad going out the door.

21 A. Yes.

22 Q. And you said it would go from a
23 product manager to a --

24 A. Up the marketing chain of command.
25 Depending on the time frame would determine

1 the title, because titles changed and evolved
2 over time. We went from managers to
3 directors.

4 You know, there was a change in
5 titles all through the United States this
6 happened in the business world. So it would
7 go through the marketing chain of command,
8 from the product manager to the president.

9 Q. Let's start with the vice
10 president of marketing and then work our way
11 up.

12 A. There would be one person after
13 the vice president of marketing.

14 Q. The president of marketing or the
15 president of the company?

16 A. The president of the company.

17 Q. Okay. Who is William Moore?

18 A. William Moore was the -- at one
19 time, was the advertising manager. And he
20 was my predecessor as vice president of
21 marketing. The difference was I was vice
22 president of marketing and sales. He was
23 never in sales.

24 Q. And you said Charles Mullen was
25 president of the company in the '90s; is

1 that correct?

2 A. For a period of time in the '90s,
3 yes, prior to the time he retired.

4 Q. Would you consider those people
5 your superiors at American Tobacco? Were
6 they people you reported to?

7 MR. BASSETT: Object to the form.

8 THE WITNESS: At different points
9 in time, yes.

10 Q. (By Mr. Gruenloh) If they said
11 something regarding the marketing or sales
12 policy at American, would you have reason to
13 disagree with them?

14 A. I may.

15 Q. What does the term biologic
16 activity mean to you?

17 MR. BASSETT: Object to the form
18 of the question.

19 THE WITNESS: It means biologic
20 activity. I'm not sure what it means.

21 Q. (By Mr. Gruenloh) Do you know
22 what biological activity means? Have you
23 heard that term used before?

24 A. Not really, no.

25 Q. Do you know whether biological

1 activity has a connotation of negative health
2 effects or positive health effects?

3 MR. BASSETT: Object to the form
4 of the question.

5 THE WITNESS: To me it could be
6 algae growing in a pond. I mean, it's
7 biologic activity.

8 Q. (By Mr. Gruenloh) You have no
9 idea?

10 A. No, I have no idea.

11 Q. Okay. Well, have you heard the
12 term biologic activity used in the context of
13 cigarette smoking, cigarette smoking and
14 health?

15 A. No, I have not.

16 Q. You've never heard that term?

17 A. Not that I recall.

18 Q. Have you ever seen that term in a
19 memorandum or document --

20 A. No.

21 Q. -- a tobacco industry memorandum
22 or document?

23 A. No, I have not.

24 Q. So in the context of cigarette
25 smoking and health and, if I asked you is

1 biological activity a good thing or a bad
2 thing, you would have no idea?

3 MR. BASSETT: Let me object to
4 the form. Mike, Mr. Gesell is obviously
5 here under your notice to talk about
6 marketing related to Carlton cigarette brand,
7 and now we are kind of going far afield in
8 this biological research.

9 MR. GRUENLOH: I think the notice
10 goes beyond that; and his knowledge of the
11 safety of the product that he was marketing
12 is certainly relevant to this deposition.

13 MR. BASSETT: Well, it says
14 marketing, market research and consumer
15 testing of the Carlton brand cigarettes. I
16 don't see anything about safety or any other
17 kind of biological or scientific research
18 related to it.

19 MR. GRUENLOH: I think we'll have
20 to agree to disagree on this, because I
21 think it's relevant that -- I think that my
22 questions regarding the safety of the
23 product, to someone who is responsible for
24 selling the product, are relevant in this
25 context.

1 MR. BASSETT: I don't believe
2 that reflects the notice as you set it out.

3 MR. GRUENLOH: I understand your
4 objection, and your objection is noted.

5 THE WITNESS: The question again,
6 please?

7 Q. (By Mr. Gruenloh) The question
8 is, in the context of cigarette smoking and
9 health, if someone asked you is biologic
10 activity a good thing or a bad thing, would
11 you have any idea?

12 A. No, I would not.

13 Q. Do you know what an engineered
14 cigarette is?

15 A. Engineered cigarette?

16 Q. An engineered cigarette.

17 MR. BASSETT: Object to the form.

18 THE WITNESS: I may have heard it
19 before. I don't recall. It is not a term
20 that I used, so I'm not sure. It is
21 possible I may have heard that term.

22 Q. (By Mr. Gruenloh) Do you have
23 any idea what an engineered cigarette is?

24 MR. BASSETT: Object to the form
25 of the question.

1 THE WITNESS: Not really. I
2 mean, it may be something I have heard in
3 the past, but I really don't recall.

4 Q. (By Mr. Gruenloh) So if someone
5 asked you what is an engineered cigarette,
6 you wouldn't have the first inkling of what
7 to tell them?

8 MR. BASSETT: I object to the
9 form of the question.

10 THE WITNESS: I would ask them to
11 clarify it.

12 Q. (By Mr. Gruenloh) Do you know
13 what engineered means?

14 MR. BASSETT: Same objection.

15 THE WITNESS: To me, engineered,
16 it could mean many things. That's the
17 problem. So I'm not sure exactly what it
18 means. That's why I would ask them to
19 clarify what they're talking about.

20 Q. (By Mr. Gruenloh) So if I ask
21 you what is an engineered cigarette right
22 now, you can't give me an answer without
23 just guessing?

24 MR. BASSETT: Object to the form
25 of the question.

1 THE WITNESS: I would ask you to
2 clarify it.

3 Q. (By Mr. Gruenloh) Okay. Have
4 you ever heard the term safe cigarette or
5 safer cigarette?

6 A. I've heard it in the press.

7 Q. Okay. Only in the press?

8 A. That's correct.

9 Q. Do you know what it means?

10 MR. BASSETT: Object to the form
11 of the question.

12 THE WITNESS: It is a presumption
13 that somehow this cigarette is safer than
14 another cigarette.

15 Q. (By Mr. Gruenloh) Do you know if
16 the term safe or safer cigarette is a
17 euphemism for engineered cigarette?

18 A. No, I'm not.

19 Q. Have you ever seen the term safe
20 or safer cigarette used in any tobacco
21 industry documents?

22 A. No.

23 Q. Have you ever discussed the term
24 safe or safer cigarette with anyone at
25 American Tobacco or any other tobacco

1 company?

2 A. I did not discuss with anyone at
3 American Tobacco, and I really didn't have
4 any discussions with -- outside of the
5 company except at dinners and what have you,
6 social activities.

7 Q. Have you ever discussed that term,
8 safe or safer cigarette, with lawyers?

9 A. No, I have not.

10 Q. When you had your meeting with
11 Mr. Bassett and Mr. Riley, that term never
12 came up?

13 MR. BASSETT: Let me object to
14 the form of the question and to the extent
15 you're asking about specific conversations
16 that Mr. Gesell had with his attorneys in
17 the matter, I would instruct him not to
18 answer the question on the grounds that it
19 constitutes privilege by the attorney-client
20 communication.

21 MR. GRUENLOH: Well, I'm not
22 asking him to disclose the content of the
23 communications. I'm just asking him if that
24 ever came up.

25 THE WITNESS: Not by me. I

1 never used the word. It may have been asked
2 in a question exactly like you're asking it,
3 and that would have been the context. And
4 the answer would have been the same.

5 Q. (By Mr. Gruenloh) Were you
6 instructed on how to answer that question?

7 A. I wasn't --

8 MR. BASSETT: Again, I would
9 instruct the witness not to answer on the
10 grounds that that could cover communications
11 that are privileged by attorney-client.

12 Q. (By Mr. Gruenloh) Have you ever
13 heard the term less hazardous cigarette?

14 A. I have heard people use the
15 terminology, yes.

16 MR. BASSETT: Object to the form
17 of the question.

18 Q. (By Mr. Gruenloh) Who have you
19 heard use that terminology?

20 A. Again, it would only be in the
21 press.

22 Q. Only in the press, you never
23 heard anybody at American Tobacco use the
24 term less hazardous cigarette?

25 A. We did not talk in terms of a

1 less hazardous cigarette, no.

2 Q. Have you ever discussed the issue
3 of a less hazardous cigarette with attorneys?

4 MR. BASSETT: Object to the form
5 of the question.

6 THE WITNESS: No, I have not.

7 Q. (By Mr. Gruenloh) Do you
8 understand what I mean by the term less
9 hazardous cigarette?

10 A. Again --

11 MR. BASSETT: Same objection to
12 the form.

13 THE WITNESS: -- it is pretty
14 subjective. It could mean lots of things.

15 Q. (By Mr. Gruenloh) Well, let me
16 ask you, what do you believe that term
17 means, less hazardous cigarette?

18 MR. BASSETT: Object to the form
19 of the question.

20 THE WITNESS: In the context of
21 the year 2000 in which you read today in the
22 press, I'm assuming it means less tar and
23 nicotine, but I don't know. That's a
24 presumption on my part.

25 Q. (By Mr. Gruenloh) Okay. That's

1 a fair answer, but let me ask you in the
2 context of what we're talking about in this
3 lawsuit, which I think is the mid '70s to
4 the early '90s. In that context, what do
5 you think the term less hazardous cigarette
6 means?

7 MR. BASSETT: Same objection to
8 the form.

9 THE WITNESS: I don't know. I
10 really don't know.

11 Q. (By Mr. Gruenloh) Do you think
12 it would be different in the context of the
13 year 2000?

14 MR. BASSETT: Same objection to
15 the form of the question.

16 THE WITNESS: I don't know.
17 Again, I would be guessing. It wasn't
18 terminology that I came across when I was
19 working for the company. This is much more
20 contemporary, much more current, so to speak.

21 Q. (By Mr. Gruenloh) Well, I'm
22 sorry to harp on this, but I wouldn't be
23 doing my job if I didn't.

24 Do you have reason to believe
25 that the term less hazardous cigarette would

1 mean something different in the year 2000, as
2 we sit here today, than it would mean in the
3 context of 1974 to 1992?

4 A. Again --

5 MR. BASSETT: Let me object again
6 to the form. I don't know how this relates
7 to the marketing, advertising consumer
8 research of Carlton cigarettes, Mike. If
9 you're going to pursue this line of
10 questioning and this is going to be the way
11 this deposition proceeds, I would suggest
12 that maybe we go ahead and cut off the
13 deposition and let us move for protective
14 order and ask the court for protection from
15 these questions that obviously have nothing
16 to do with the notice.

17 MR. GRUENLOH: Well, if you feel
18 that you need to do that, that is fine, but
19 as you noted at the beginning of the
20 deposition, all of your objections are
21 reserved. I don't see any reason why we
22 can't go forward. I'll ask my questions.
23 If you have an objection, then you go ahead
24 and object. If the witness has an answer,
25 he can answer.

1 MR. BASSETT: You're asking a
2 witness, who has been put up as a corporate
3 representative on a very specific limited
4 notice, questions that go far afield of the
5 notice itself.

6 MR. GRUENLOH: Again, I don't
7 believe that they do, and I don't think that
8 we need to be having this discussion here.
9 You've noted your objection.

10 MR. BASSETT: That's a different
11 context. As you know, Rule 37 specifically
12 allows for this procedure to seek the
13 protection when you're asking these questions
14 that really have nothing to do with the
15 notice that you've called on a corporate
16 representative to come testify today.

17 MR. GRUENLOH: But you see,
18 Randy, it's your position that these
19 questions are not relevant. It's my position
20 that they are. So we have a disagreement.
21 So make your objection; I'll continue.

22 If you're going to instruct him
23 not to answer, that's something entirely
24 different.

25 MR. BASSETT: If you're going to

1 continue in this line of safe cigarettes and
2 less hazardous cigarettes and biological
3 activity, and it has no relation, as I see
4 it, to Carlton cigarettes then yes, we will
5 suspend the deposition while we can seek
6 protection from the current questioning of
7 the deposition.

8 MR. GRUENLOH: That's fine. If
9 you feel you need to do that, you let me
10 know.

11 Q. (By Mr. Gruenloh) Did American
12 ever do any marketing studies regarding safer
13 or less hazardous cigarettes, as far as
14 you're concerned -- or as far as you know?

15 MR. BASSETT: Object to the form
16 of the question.

17 THE WITNESS: Not that I'm aware
18 of. Again, that is not terminology that we
19 used.

20 Q. (By Mr. Gruenloh) Did American
21 ever do any marketing studies or surveys or
22 focus groups to determine the awareness of
23 consumers of the smoking and health issue?

24 MR. BASSETT: Object to the form
25 of the question.

1 THE WITNESS: We did research to
2 find out the awareness, for instance, of
3 consumers' interest in tar. In other words,
4 that awareness of tar levels or even
5 nicotine, their awareness, but that was the
6 type of -- that type of research we did.
7 So I qualify that we did.

8 Q. (By Mr. Gruenloh) Okay. Do you
9 consider that to be, that to fall under the
10 broad characterization of smoking and health
11 issues, research in tar and nicotine?

12 MR. BASSETT: Object to the form
13 of the question.

14 THE WITNESS: We weren't
15 researching tar and nicotine. We were
16 researching consumers' awareness and interest
17 in, the interest in the tar and nicotine
18 information because, again --

19 Q. (By Mr. Gruenloh) I apologize, I
20 was using the term as consumer research,
21 checking with consumers to find out their
22 interests, their concerns.

23 MR. BASSETT: Object to the form.

24 THE WITNESS: We did check to
25 find out their interest because, as you are

1 well aware, Carlton is the lowest, was the
2 advertising theme, and we put the tar on the
3 package and we wanted to know if consumers
4 were even interested in this information. It
5 was done relative to Carlton specifically.

6 Q. (By Mr. Gruenloh) Okay. Let's
7 talk about those marketing studies regarding
8 tar and nicotine.

9 When did you do those?

10 A. We did those in the '90s. It
11 was focus groups. It would have been
12 qualitative, not quantitative.

13 Q. Were there ever any studies or
14 focus groups done prior to 1990 regarding tar
15 and nicotine and American Tobacco?

16 MR. BASSETT: Object to the form
17 of the question.

18 THE WITNESS: There was research
19 done even prior to that relative to Carlton
20 and its tar level. In other words, you
21 know, Carlton had, let's come up with a
22 number, at one point, three milligrams of tar
23 versus Carlton at one milligram of tar. You
24 look at the packages and you say which one
25 do you want to smoke. That kind of thing.

1 That kind of research was done.

2 Q. (By Mr. Gruenloh) When did that
3 type of research begin at American?

4 A. I really don't know. You know,
5 Carlton has the tar and nicotine on the
6 package going back into the '60s. So at
7 some point it was done. It was done
8 periodically, probably tied in with packaging
9 changes, new product introductions, that kind
10 of thing.

11 Q. How were those studies that were
12 done back in the '60s that you just
13 discussed different than the ones you just
14 told me about that were done in 1990?

15 A. Well, I'm not saying we did any
16 in the '60s. We might have, when we did
17 packaging changes. I know we did some
18 probably in the '80s or something, but I
19 don't know if we did them back in the '60s.
20 We may have.

21 Q. Let me ask you this: Did you do
22 any such surveys or research, consumer
23 research, in the '70s?

24 A. They might have. That would have
25 been done through research. Some of that

1 stuff, it would have been qualitative with
2 packages. We might have, in testing
3 different products.

4 Q. Mr. Gesell, do you know one way
5 or the other whether that research was
6 done --

7 A. No, I do not.

8 Q. -- in the 1970s?

9 A. No, I do not.

10 Q. The only research you are
11 specifically aware of regarding consumer
12 marketing, the focus groups regarding tar and
13 nicotine then is that which you just told me
14 about in the 1990s?

15 MR. BASSETT: Object to the form.

16 Q. (By Mr. Gruenloh) Is that
17 correct?

18 A. I'm thinking. I know there was
19 research earlier, but I'm not sure exactly
20 which dates.

21 Q. All right. Then let's go to the
22 study that you told me about a second ago.
23 Was it in 1990 or the '90s?

24 A. It was in the '90s, and it was
25 focus groups. It wasn't a big study. It

1 wasn't qualitative. It wasn't quantitative.

2 It was qualitative.

3 Whenever you changed packaging or
4 even change an ad, especially when you dealt
5 with Carlton, you talked to Carlton smokers
6 and found out -- asked them questions, why
7 they smoke the brand they're smoking, what do
8 they get out of this ad.

9 Q. You keep saying it was
10 qualitative, not quantitative.

11 A. Right.

12 Q. Does that mean that you're just
13 looking for substance with a few folks, it
14 wasn't a massive study?

15 A. That's correct. And you couldn't
16 use it to make national conclusions, but it
17 could -- maybe it gave you a flavor of what
18 people were thinking.

19 Q. Okay. How many focus groups were
20 done in the 1990s regarding tar and nicotine?

21 A. I can't tell you. We did a lot
22 of focus groups on all our brands during the
23 1990s. It was a good, quick check on a
24 brand and on advertising. So there were a
25 lot of focus group studies.

1 Q. Let me narrow the question then.

2 How many focus groups were done
3 in the early 1990s regarding Carlton
4 cigarettes, the tar and nicotine in Carlton
5 cigarettes?

6 A. Focus groups weren't done
7 specifically on tar and nicotine, but the
8 questions relative to the tar and nicotine
9 would be asked, would come up in the focus
10 groups. It would be a lot of areas that
11 would be covered, including what you think of
12 the taste of your Carlton, if you're talking
13 to Carlton smokers, what could be better, you
14 know, so forth and so on.

15 So it would be a series of
16 questions. And being you're with Carlton,
17 you would always -- you would ask on the
18 tar, are you aware of the tar level of the
19 product you're smoking.

20 Q. So are you telling me that, in
21 the early 1990s, every focus group that was
22 done regarding Carlton cigarettes had
23 information in it regarding tar and nicotine?

24 MR. BASSETT: Object to the form.

25 THE WITNESS: No, I'm not. I'm

1 telling you that it was a question that was
2 asked, maybe not in every one, but it was
3 appropriate to ask.

4 Q. (By Mr. Gruenloh) Okay. Well,
5 I'm trying to get a sense of how many?

6 A. I can't tell you.

7 Q. You don't have any idea?

8 A. I really don't have any idea.

9 Q. Did you participate, yourself, in
10 any of those studies regarding tar and
11 nicotine for Carlton cigarettes?

12 A. I might have participated in a
13 few, but again, they were not for tar and
14 nicotine. Those were questions that also
15 came up. They usually covered a spectrum of
16 subjects dealing with a brand.

17 If you were talking about
18 packaging, you would take the opportunity,
19 again, to ask -- you might turn the pack
20 over and say, what was the tar on that pack
21 of Carlton to see if they remembered, that
22 kind of thing.

23 Q. Who would have been responsible
24 for conducting those focus groups in the
25 early '90s on tar and nicotine?

1 MR. BASSETT: Object to the form.

2 THE WITNESS: Well, again, they
3 weren't on tar and nicotine. Tar and
4 nicotine may have been part of the focus
5 groups. It was not the whole purpose of the
6 focus group. It would have been one of many
7 questions asked. And we used outside
8 moderators.

9 Q. (By Mr. Gruenloh) All right.
10 Let me rephrase the question and make sure
11 I'm getting the answer that I think I am.

12 A. Okay.

13 Q. Who, in the early 1990s,
14 participated in or controlled those studies,
15 directed those studies, that would have dealt
16 with tar and nicotine?

17 A. Market research would have set up
18 the studies. We had a market research
19 department.

20 Q. Who was the head of the market
21 research department in the early '90s?

22 A. In the early '90s, that was a
23 gentleman by the name of Deeder Wigelbower.

24 Q. I won't ask you to spell that.

25 A. Okay.

1 Q. At the end of those focus groups,
2 was there generally a conclusion or a finding
3 based upon the data that was gathered? And
4 we are talking about those focus groups that
5 was done in the early 1990s?

6 A. Inconclusive. It would be a
7 finding. There is not always a yea or a
8 nay. It could be inconclusive.

9 Q. For some of them there was a
10 finding?

11 A. Depending on what the question
12 was. Do you prefer one package over
13 another? There may have been a finding.
14 Do you like one ad over another?
15 Maybe it was murky, maybe it was a wash.
16 Do you prefer the current campaign versus the
17 new execution of the ad?

18 So it is -- that's why you did
19 them. But there wasn't always a solid
20 finding, per se.

21 Q. Okay. Can you remember, in the
22 early 1990s, with regard to those studies
23 that did include questions on tar and
24 nicotine, was there ever any finding at the
25 end of those studies?

1 MR. BASSETT: Object to the form
2 of the question.

3 THE WITNESS: The only one I
4 recall, and this was, again, the early '90s,
5 and times changed, is that there seemed to
6 be very little interest by the smokers,
7 including the Carlton smokers in nicotine
8 levels. It was tar focused, was the main
9 interest at that point in time.

10 Q. (By Mr. Gruenloh) Can you recall
11 any specific survey that had such a finding
12 for me today?

13 A. No, because, again, it was all
14 qualitative. I would have heard it maybe
15 verbally, you know, or in a summary, a
16 verbal summary in a meeting. It may have
17 been on an acetate, on a slide. And again
18 it would have been qualitative, maybe you're
19 talking 20, 30 people.

20 Q. Mr. Wigelbower --

21 A. Wigelbower.

22 Q. -- Wigelbower would have told you?

23 A. Or he would have been there when
24 it was presented by the outside moderator.

25 Q. Do you know if American ever

1 attempted to produce a safer cigarette or
2 less hazardous cigarette?

3 MR. BASSETT: Object to the form
4 of the question.

5 THE WITNESS: Again, I told you
6 that is not terminology we used, so I don't
7 know.

8 Q. (By Mr. Gruenloh) I take it your
9 answer would be the same if I asked you if,
10 to your knowledge, American ever attempted to
11 produce a cigarette with less biological
12 activity?

13 MR. BASSETT: Same objection as
14 to the form. And again, Mr. Gesell is not
15 here in a capacity as a corporate rep for
16 those types of questions.

17 THE WITNESS: I can't answer the
18 question, because I'm not sure what you mean
19 by biological activity.

20 Q. (By Mr. Gruenloh) Because you
21 don't know what that term is?

22 A. That is correct, as we went
23 through earlier.

24 Q. Do you have any idea whether
25 American Tobacco had the technological

1 expertise to develop a safer or engineered
2 cigarette?

3 MR. BASSETT: I object to the
4 form of the question, and again object to
5 the extent it's outside the notice and to
6 the extent Mr. Gesell is here in his
7 capacity as a corporate representative.

8 THE WITNESS: Again, I'm not sure
9 what a safer engineered cigarette is. So,
10 therefore, I obviously don't know if the
11 company could have made one.

12 Q. (By Mr. Gruenloh) Do you know
13 whether The American Tobacco Company ever had
14 the technological expertise to produce a less
15 hazardous cigarette?

16 MR. BASSETT: Same objection, as
17 previously stated.

18 THE WITNESS: It's the same
19 answer. I'm not even sure what a less
20 hazardous cigarette is.

21 Q. (By Mr. Gruenloh) Was it part of
22 your mission, your mission personally, at
23 American Tobacco to help ensure the safety of
24 the product?

25 MR. BASSETT: Object to the form

1 of the question.

2 THE WITNESS: My mission,
3 obviously, was the marketing and sales of the
4 products and work with the research and
5 manufacturer to make the best product that we
6 could, the highest quality product, the best
7 tobaccos and make different products for
8 different people, from Pall Mall non-filter
9 all the way down to Carlton, depending on
10 your tastes and preferences.

11 Q. (By Mr. Gruenloh) But was it
12 part of your mission to specifically attempt
13 to make a safer product?

14 A. I don't know how you could make a
15 safer product, and I'm not sure even what
16 that means. You've got different types of
17 products. You've got Carlton that is running
18 low tar in nicotine levels and you've got
19 cigarettes at the other spectrum, depending
20 on your preference.

21 Q. Was it part of your mission to
22 ensure that the product that was going out
23 the door was safe for consumers?

24 MR. BASSETT: Object to the form
25 of the question.

1 THE WITNESS: It is part of our
2 mission that it was the highest quality we
3 could make it.

4 Q. (By Mr. Gruenloh) But not safe,
5 just the highest quality you could make it?

6 MR. BASSETT: Object to the form
7 of the question.

8 THE WITNESS: You're raising,
9 again, an issue which I don't know how to
10 answer. I don't know what would be a safer
11 cigarette. A cigarette is a cigarette, and
12 it has tar and it has nicotine. Some
13 cigarettes have a high tar and some
14 cigarettes have low tar.

15 If have you no tar, it's not a
16 cigarette.

17 Q. (By Mr. Gruenloh) Okay. Is a
18 cigarette which has high tar a safer
19 cigarette than a cigarette which has low tar?

20 MR. BASSETT: Object to the form
21 of the question.

22 THE WITNESS: You know, I --
23 again, you are talking in an area that I
24 really don't know. I don't know what you
25 mean by safer. A cigarette that has high

1 tar has more smoke. It is as simple as
2 that.

3 What makes one cigarette safer
4 than another, I can't answer that. I don't
5 know if anybody can. You have high tar
6 cigarettes and you have low tar cigarettes.
7 And then, of course, there is the way people
8 smoke cigarettes. So I don't know how you
9 answer a question like that.

10 Q. (By Mr. Gruenloh) It seems like
11 we are getting tied up on the word safe
12 here, so let me ask you -- strike that.

13 Whose mission was it or primary
14 responsibility was it to ensure the safety of
15 American Tobacco products?

16 MR. BASSETT: Let me again object
17 to the form.

18 THE WITNESS: Again, you are
19 raising an issue that I did not perceive as
20 an issue. The person responsible for the
21 quality of the product would have been our
22 research department because they handle
23 quality control. And their job would have
24 been to make sure that the blend was as
25 agreed on, that the tar and nicotine levels

1 were as stated, and that the product
2 delivered what it said it delivered in taste,
3 tar, and nicotine.

4 The way you're asking the
5 question, I can't answer that. I don't
6 know.

7 Q. (By Mr. Gruenloh) Was part of
8 the mission, the job responsibility of your
9 research and development department, to ensure
10 that cigarettes were safe for the consumers?

11 MR. BASSETT: Object to the form
12 of the question.

13 THE WITNESS: Their job was to
14 ensure that we maintain the quality standards
15 that we said that we had, whether the
16 blending was consistent and that the tar and
17 nicotine were as stated.

18 Q. (By Mr. Gruenloh) Should it have
19 been the job of the research and development
20 department to ensure that the product was as
21 safe as it could be when it left American
22 Tobacco's doors and went to the consumer?

23 MR. BASSETT: Let me again object
24 to the form of the question.

25 THE WITNESS: As you said

1 earlier, we are getting hung up on the word
2 safe. I don't know how to answer that
3 question. We didn't deal with the word
4 safe. There is a risk in smoking.

5 Q. (By Mr. Gruenloh) You know what
6 the word safe means?

7 A. I know what the word safe means,
8 and I don't know what would be a safe
9 cigarette. I don't know how to answer that.

10 Q. Sir, if a manufacturer's pools or
11 automobiles or anything like that -- they
12 have to ensure that their product is as safe
13 as it can be for consumers. And I'm asking
14 you if it was the mission --

15 A. Wait --

16 MR. BASSETT: But --

17 MR. GRUENLOH: I'm asking the
18 question.

19 Q. (By Mr. Gruenloh) I'm asking you
20 if it was the mission of anyone at American
21 Tobacco Company to ensure that the product
22 was as safe as it could be when it left the
23 door?

24 MR. BASSETT: Object to the form.

25 THE WITNESS: A pool

1 manufacturer's job is to make sure, obviously
2 one of the things, the pool doesn't leak.
3 Okay? In a cigarette manufacturer, the
4 research job would make sure the cigarette
5 meets the standard that we set for the
6 cigarette.

7 I can't say that it is safe or
8 unsafe, because we know the product has
9 risks. How can I say safe? The word is
10 inappropriate.

11 I can't quantify -- I can't qualify that.
12 It's a product with known risks, and we made
13 different products; and the researcher's job
14 is to make sure that the product met the
15 specifications that we set it at.

16 Q. (By Mr. Gruenloh) Was there
17 anyone at American Tobacco whose
18 responsibility was to try to decrease the
19 risks of the product that was going out to
20 the consumer?

21 MR. BASSETT: Object to the form
22 of the question.

23 THE WITNESS: I don't know. I
24 can't answer that either. I have no idea
25 because it didn't seem -- I don't know how

1 you decrease the risks. There is a risk,
2 and it depends on how you smoke, who the
3 smoker is. There are so many factors
4 involved.

5 Q. (By Mr. Gruenloh) Do you believe
6 that smoking causes cancer in human beings?

7 MR. BASSETT: Object to the form
8 of the question.

9 THE WITNESS: Yes, I guess it
10 can. Sure. You know, if you take into
11 consideration all the other variables that go
12 with it, I mean, the environment, your
13 genetic makeup, your diet. I'm sure certain
14 people, it could be very risky to smoke.
15 Somebody has very high blood pressure,
16 obviously they shouldn't be smoking, so sure.

17 Q. (By Mr. Gruenloh) So your answer
18 is yes?

19 A. Yes, it could.

20 Q. It could or yes, it does?

21 MR. BASSETT: Object to the form.

22 THE WITNESS: Yes, it can. It
23 doesn't always. It can.

24 Q. (By Mr. Gruenloh) Do you believe
25 smoking has ever caused cancer in a single

1 human being?

2 MR. BASSETT: Object to the form.

3 THE WITNESS: It can.

4 Q. (By Mr. Gruenloh) No, I'm asking
5 you do you believe that it ever has. I'm
6 not asking you if it can. You told me that
7 it can.

8 A. In conjunction with other things,
9 sure it has. Sure. I -- you know, yes,
10 in conjunction with other things.

11 If it automatically caused cancer,
12 then every smoker would have cancer, which
13 every smoker doesn't. So obviously it works
14 on different people different ways and there
15 are a lot of factors involved. I'm not a
16 scientist. I'm a layman. I'm a marketer.

17 Q. I understand that. Is it your
18 testimony that cigarette smoking can only
19 cause cancer when in conjunction with other
20 factors?

21 A. I don't know. I'm not a
22 scientist. My contention is that, yes, it
23 can contribute to cancer, maybe it can cause
24 cancer, but I don't know how many people it
25 causes cancer in, and I don't know why one

1 person and not another. I don't claim to
2 know any of that. I'm aware of the risks
3 and, sure, I guess it can cause cancer.

4 Q. You're not here as an expert, and
5 I'm not asking you to give an expert
6 opinion, but wouldn't you think that a
7 cigarette that doesn't cause cancer would be
8 a safer cigarette --

9 MR. BASSETT: Object to the form
10 of the question.

11 Q. (By Mr. Gruenloh) -- than a
12 cigarette that does cause cancer?

13 MR. BASSETT: Same objection to
14 the form.

15 THE WITNESS: I'm not trying to
16 be a wise guy, but in the same respect, a
17 car without wheels would be a lot safer
18 because it wouldn't kill anybody on the road.

19 I don't know how you have -- it
20 would be a cigarette without tobacco, or it
21 would be a cigarette without smoke.

22 Q. (By Mr. Gruenloh) Let me ask you
23 so I understand your comparison.

24 You're saying that cancer is to a
25 cigarette as wheels are to a car?

1 A. No, I'm not saying that.

2 MR. BASSETT: Object to the form.

3 THE WITNESS: That is not what
4 I'm saying.

5 Q. (By Mr. Gruenloh) That was your
6 comparison, sir. I'm just trying to
7 understand what you're saying.

8 A. Ask me the question again, please.

9 Q. Wouldn't you think that a
10 cigarette which does not cause cancer would
11 be safer than a cigarette which does cause
12 cancer?

13 MR. BASSETT: Same objection to
14 the form.

15 THE WITNESS: My comment on that,
16 I don't know what a cigarette -- what
17 cigarette that would be. I mean, there are
18 risks with
19 tobacco. There are risks with smoking. And
20 I don't care if you're smoking tobacco or
21 some other substance, you're inhaling particle
22 matter into your lungs, so there are risks.

23 I don't know what you are saying.
24 What would be the safer cigarette? I guess
25 a cigarette without smoke.

1 Q. (By Mr. Gruenloh) Let's assume
2 for a moment that there was a cigarette that
3 did not cause cancer. I want you to assume
4 that for the purposes of this question.

5 A. I don't know how I can assume
6 this.

7 Q. You can't assume that?

8 A. Okay. Go ahead.

9 MR. BASSETT: Let me object to
10 the form. Now you're asking for assumptions,
11 although you already qualified Mr. Gesell is
12 not an expert, yet you are asking him to act
13 as an expert by taking in certain assumptions
14 in responding to a question.

15 MR. GRUENLOH: I just have one
16 further question on this and then I will
17 leave the line of questioning.

18 THE WITNESS: Okay.

19 Q. (By Mr. Gruenloh) I want you to
20 assume there is a cigarette that does not
21 cause cancer.

22 A. Okay.

23 Q. Would that be safer for a
24 consumer, that cigarette which does not cause
25 cancer, than a cigarette which does cause

1 cancer?

2 A. Sure.

3 MR. GRUENLOH: Thank you. Why
4 don't we go off the record and let the
5 videographer change the tape.

6 THE VIDEOGRAPHER: We're off the
7 video record at 11:58.

8 (A recess was taken.)

9 THE VIDEOGRAPHER: We are on the
10 video record at 12:16.

11 Q. (By Mr. Gruenloh) Mr. Gesell,
12 before we left, I asked you if you knew
13 whether it was part of your research and
14 development department at American Tobacco
15 Company, whether you knew it was part of
16 their mission or job responsibility to ensure
17 that the cigarettes going out the door were
18 as safe as they could be for consumers. I
19 don't think that I got an answer to that
20 yet. Can you tell me what your answer is
21 to that question?

22 MR. BASSETT: Let me object to
23 the form.

24 THE WITNESS: Well, the answer
25 that I was giving you was that I'm not sure

1 how you could ensure it was the safest
2 possible. We could ensure it was the best
3 we could make it as far as quality and that
4 it met the standards that we said that it
5 met.

6 The word safe was not part of the
7 job description, because it was not something
8 that I don't think anyone knew how to do.

9 Q. (By Mr. Gruenloh) Okay. So it's
10 your testimony that your R&D department was
11 charged primarily with making sure that the
12 cigarettes were of uniform quality when they
13 left the door?

14 A. That's correct.

15 Q. Would that job responsibility or
16 duty then of your R&D department include
17 checking for toxics which got introduced into
18 the cigarette, like polonium or things like
19 that, it was part of their duty to make sure
20 that things like that weren't in the
21 cigarettes?

22 MR. BASSETT: Let me object to
23 the form of the question.

24 THE WITNESS: Well, their job was
25 to make sure that what was in the cigarette

1 was supposed to be in it or what was in it
2 naturally. Yes, there were casings which
3 were flavorings and they would have to make
4 sure that they were correct, that they were
5 right, the right casings.

6 What substances were naturally in
7 there and belonged there, obviously they
8 would know that they were there because they
9 would test the cigarettes. Obviously if
10 something was not supposed to be in there,
11 they would have to be rejected. But I don't
12 know what those substances are. I'm not a
13 chemist.

14 Q. (By Mr. Gruenloh) I understand.
15 During your employment at American Tobacco,
16 did you at any time communicate regularly
17 with your R&D department, your research and
18 development department?

19 A. Oh, sure. Yes.

20 Q. During which one of these
21 positions did you communicate regularly with
22 your R&D department, the positions that we
23 discussed this morning?

24 A. In all the marketing positions,
25 including my senior positions, I would

1 communicate regularly for different reasons,
2 depending on the level -- the level I had at
3 that particular time, my position.

4 Obviously when I was vice
5 president of marketing and sales, I would be
6 meeting with the senior research person on a
7 regular basis, and we would discuss any
8 potential problems we were having with our
9 products. Maybe blend changes that were
10 being considered, that type of thing.

11 Q. So from 1979 until 1995 when you
12 left the company, you communicated regularly
13 with your R&D department; is that correct?

14 A. Right, except for that hiatus when
15 I was in sales.

16 Q. Okay. Who did you communicate
17 with most regularly in your R&D department?

18 A. The person I knew the best was
19 Bob Sprinkle because he became the senior --
20 the executive vice president of research,
21 vice president of research -- executive
22 president of research in the '90s when I was
23 in charge of marketing and sales. So we
24 were peers.

25 Q. Anyone else, aside from Mr.

1 Sprinkle?

2 A. There was a gentleman I dealt
3 with called Dick Chumney who worked, to a
4 great deal, in new product development. He
5 worked for Sprinkle.

6 Q. And can you tell me generally
7 what the substance of your communications
8 with those two gentlemen were?

9 A. It would have been the results of
10 maybe some research that was done with the
11 Southeastern Research.

12 Q. Consumer research?

13 A. Yes. Maybe on blends, on how did
14 it go; or if we were lowering the tar on a
15 product, what was the consumer perception of
16 that, did they like it more or less.

17 Usually blend changes or new
18 product formulations.

19 Q. Did you ever have any specific
20 conversations with Mr. Sprinkle -- I'm sorry,
21 what was the other gentleman's name?

22 A. Chumney.

23 Q. Did you ever have any specific
24 conversations with either of those two
25 gentlemen regarding the safety of cigarettes?

1 MR. BASSETT: Object to the form
2 of the question.

3 THE WITNESS: No, we did not.

4 Q. (By Mr. Gruenloh) Did you ever
5 have any conversations with those two
6 gentlemen regarding the health of consumers
7 who were smoking cigarettes?

8 MR. BASSETT: Object to the form.

9 THE WITNESS: No, we did not.

10 Q. (By Mr. Gruenloh) Did you ever
11 check to see whether the cigarettes that
12 American were selling were as safe as they
13 could be for a consumer?

14 MR. BASSETT: Let me object again
15 to the form of the question.

16 THE WITNESS: We're getting back
17 again to the use of the word --

18 Q. (By Mr. Gruenloh) I know that we
19 are, but we both know what the word safe
20 means.

21 A. And I keep on telling you, I
22 don't know how you address that with
23 cigarettes. So it was not something I asked
24 them to check. We would check the quality
25 of the product. We would do -- we would

1 have the sales organization pick up
2 cigarettes at random and send them into
3 research so they could check to see if the
4 tar and nicotine were correct, even though we
5 had checked them when they left the factory
6 and also checked moisture levels.

7 Q. Aside from the product
8 specifications, the mixture, that there was
9 uniform quality in the brands, did you ever
10 have any other discussions with your R&D
11 department concerning the safety of
12 cigarettes?

13 A. No, I did not.

14 Q. Do you think that you should
15 have?

16 MR. BASSETT: Object to the form.

17 THE WITNESS: If I knew what we
18 could discuss, possibly I would have done it,
19 but I couldn't -- it was not something that
20 I felt that we could address.

21 Q. (By Mr. Gruenloh) Did you
22 ever --

23 A. Nor did anyone ever come to me
24 and say we can address.

25 Q. Did you ever make a study of the

1 literature or review any of the literature on
2 smoking and health?

3 A. No, I did not.

4 Q. Did your research and development
5 department ever provide any guidance on
6 marketing strategies or surveys that you
7 might conduct?

8 A. No.

9 Q. Well, they never came to you and
10 said, Mr. Gesell, how interested are the
11 consumers in low tar, low nicotine
12 cigarettes?

13 A. Usually it was the other way
14 around, to the best of my knowledge, that it
15 was always the -- it was marketing going to
16 research and saying, gentlemen, or ladies and
17 gentlemen, can you do this, can you make
18 this, can you make, for example, a cigarette
19 that tastes just like Marlboro, that kind of
20 thing. That is usually the way the
21 discussions went.

22 Q. Okay. When was Carlton first
23 developed?

24 A. In the mid '60s.

25 Q. You were employed at American

1 Tobacco when Carlton was first developed,
2 weren't you?

3 A. Yes, I was.

4 Q. Did you work at all with Carlton
5 in the mid '60s when it was first developed?

6 A. Only in the sense of dealing with
7 distributors. It was a brand that was
8 promoted, so I would be dealing with
9 distributors. I was in the service
10 department at that time, customer service
11 department.

12 Q. Now, I was under the impression
13 that Carlton cigarettes had been developed in
14 the early '60s. Was I in error?

15 A. It's -- question -- early '60s,
16 mid '60s, if I recall it was introduced in
17 '65 or something. Whether you call that
18 early or mid, it was -- I remember the
19 gentleman who it was introduced under; it was
20 Barney Walker was our president.

21 Q. Have you ever heard the term
22 Carlton concept?

23 A. Carlton concept?

24 Q. Carlton concept.

25 A. It doesn't ring a bell. That

1 doesn't mean I haven't heard it. I don't
2 know.

3 Q. Do you know why Carlton was
4 developed in 1965?

5 A. Well, it was the first -- it was
6 a forerunner in the low tar category. It
7 was actually, initially, I think by most of
8 the industry, it was considered Barney
9 Walker's fallacy, because it was really
10 before there was any interest, so to speak,
11 in lower tar cigarettes. It was a -- I
12 don't know whose brainchild it was.

13 Q. You don't believe there was a
14 need for Carlton cigarettes when they were
15 developed in 1965?

16 MR. BASSETT: Object to the form
17 of the question.

18 THE WITNESS: The question isn't
19 whether there was a need. Whether there was
20 an interest. And apparently, initially,
21 there really wasn't much of an interest. It
22 didn't really start to take off until the
23 early '70s.

24 Q. (By Mr. Gruenloh) So in answer
25 to my question why was Carlton developed, you

1 don't know?

2 MR. BASSETT: Object to the form
3 of the question.

4 THE WITNESS: No, I don't know.

5 It was a -- I really don't know who
6 developed it in the sense of whose idea it
7 was. I know it was considered ahead of its
8 time.

9 But the specific background of the
10 development of Carlton, no, I do not, no.

11 Q. (By Mr. Gruenloh) Have you ever
12 heard that Carlton was developed to be a
13 milder tasting cigarette?

14 A. That could be true.

15 Q. You don't know whether that is
16 true or not?

17 A. No. It was definitely a lighter
18 cigarette, and it was definitely milder.

19 Q. Do you smoke?

20 A. Yes, I do.

21 Q. Have you ever smoked Carlton?

22 A. I have tried it, but I don't
23 smoke Carlton.

24 Q. Would you characterize Carlton as
25 a milder tasting cigarette?

1 A. Yes, as a lighter tasting
2 cigarette, if you want to call that milder.
3 It is a very subjective term.

4 Q. When did you start smoking?

5 A. Oh, back in the '50s. When I
6 was 16, I guess.

7 Q. What brand did you start smoking
8 back in the '50s?

9 A. Originally Lucky Strike non-filter,
10 the 70 millimeter.

11 Q. Did you change to another brand?

12 A. Yes, I did.

13 Q. What brand did you change to?

14 A. Marlboro.

15 Q. Is that what you smoke now,
16 Marlboro?

17 A. No. I smoke Tareyton.

18 Q. Can you tell me how, specifically,
19 to your recollection, how does Carlton
20 compare, taste-wise, with Tareyton?

21 A. Much, much lighter. Actually,
22 because it is so much lighter, you get less
23 taste. People who perceive cigarettes, some
24 as strong and some as being very light.
25 Some people may even say gee, they're weak,

1 they're light, they're very light.

2 Q. What exactly does that term mean,
3 milder tasting? Is there something that
4 makes a cigarette milder tasting as opposed
5 to something that makes it more rich?

6 MR. BASSETT: Object to the form
7 of the question.

8 THE WITNESS: Well, it's all
9 relative to another product. I don't think
10 you can take absolute. There are cigarettes
11 that are stronger, you can say richer, and
12 there are cigarettes that may be perceived,
13 relative to that cigarette, as milder or
14 lighter. And it's really a taste perception.
15 And it all has to do with what you're used
16 to smoking.

17 Q. (By Mr. Gruenloh) What makes a
18 cigarette stronger?

19 A. The stronger taste would be
20 relative to the -- the stronger taste would
21 be relative to the tar, because you are
22 getting more smoke.

23 Q. What about the nicotine?

24 A. I don't think so. I mean,
25 nicotine, there is a relationship between the

1 tar and nicotine. The lower the tar gets,
2 the lower the nicotine gets.

3 Nicotine does affect the taste.

4 There are no ifs and buts about it. I've
5 tasted nicotine-free cigarettes and they're
6 terrible.

7 Q. Do you know what nicotine itself
8 tastes like?

9 A. No, but, of course, in its pure
10 form you wouldn't take nicotine. It is
11 diluted -- it is a natural ingredient in the
12 tobacco leaf, and I don't know, it's a very
13 small percentage of the cigarette.

14 Q. What is it about Carlton that
15 makes it taste milder?

16 MR. BASSETT: Object to the form.

17 THE WITNESS: Well, again, it's
18 milder versus what. It's a very light
19 tasting cigarette. It's got the aeration
20 filtration system, so it gives a very light
21 taste or a very mild taste.

22 Again, the use of the word mild
23 or light --

24 Q. (By Mr. Gruenloh) Well, earlier
25 you said you believed Carlton cigarettes

1 tasted milder than what you smoked, Tareyton?

2 A. That's correct.

3 Q. What is it about Carltons that
4 make them taste milder than Tareyton?

5 MR. BASSETT: Same objection to
6 form.

7 THE WITNESS: Well, it does have
8 less tar. Tareyton has roughly 14 milligrams
9 of tar, and Carlton, most of the Carlton
10 styles, not all of them, but are in the one
11 range, so that would give it a lighter
12 taste. And obviously I don't know what the
13 blending that goes into the two also that
14 could make a difference.

15 Q. (By Mr. Gruenloh) How was
16 Carlton marketed while you were at American
17 Tobacco? What was its hook?

18 A. Carlton's position always was
19 Carlton is lowest. That was the -- since
20 the late '60s or early '70s, that was the
21 bedrock, the foundation for the positioning
22 of the brand.

23 Q. What does that slogan mean,
24 Carlton is the lowest?

25 A. That it was the lowest in tar.

1 Q. So Carlton was marketed as a
2 low-tar cigarette, not a milder tasting
3 cigarette?

4 MR. BASSETT: Object to the form.

5 THE WITNESS: It was marketed as
6 the lowest, Carlton's lowest, that's correct.
7 But there was copying in it and it talked
8 about mildness and lightness.

9 Q. (By Mr. Gruenloh) And the mild
10 tasting characteristic of the cigarette was
11 basically a side-effect of the fact that it
12 had low tar, among other things perhaps;
13 correct?

14 A. Among other things. There is a
15 relationship there, sure.

16 (Plaintiff's Exhibit-2 and
17 Exhibit-3 were marked for identification.)

18 Q. (By Mr. Gruenloh) Mr. Gesell, I
19 hand you what's been marked Exhibits 2 and 3
20 to this deposition. Have you seen these
21 before?

22 A. Maybe not this exact ad, but I
23 have seen the campaign, sure.

24 Q. Can you describe for the record
25 Exhibit 2, please?

1 A. It is a magazine ad which
2 apparently, from what I see on the cover, it
3 ran in 1980 talking about Carlton is lowest.

4 Q. And Exhibit 3, can you please
5 describe that for the record?

6 A. Again, apparently an ad from Time
7 Magazine in 1980, and it also is a Carlton
8 is lowest ad. It is a different execution.

9 Q. These ads appeared in print while
10 you were employed by American Tobacco; is
11 that correct?

12 A. That is correct.

13 Q. Can you look at those two
14 exhibits for me and tell me if either one of
15 them say anything about a milder taste?

16 A. These two do not, that I can see.
17 That doesn't mean that we didn't use it at
18 some time. But no, these do not.

19 Q. How would you characterize the
20 focus of these two ads? What is the slogan
21 that is used in these two ads, the
22 overriding focus?

23 A. The overriding focus is Carlton is
24 lowest.

25 Q. Which, as you said before, refers

1 to the tar content in the cigarette; correct?

2 A. That's correct.

3 Q. Do you have any idea if it was
4 the belief of American at the time these two
5 ads were published that less tar means a
6 less hazardous cigarette?

7 A. No, I do not.

8 Q. Was it your belief at that time
9 or now that less tar means a less hazardous
10 cigarette?

11 MR. BASSETT: Object to the form
12 of the question.

13 THE WITNESS: Not necessarily,
14 which doesn't maybe answer your question, but
15 I think it depends on how you smoke and how
16 much you smoke.

17 Q. (By Mr. Gruenloh) Can you
18 explain your answer for me then?

19 A. Yes. As I said, it all depends
20 on how you smoke and how much you smoke. I
21 mean, less tar, less particle matter, which
22 should obviously lower the risk. But some
23 people would rather have two Pall Mall
24 cigarettes than a pack of Carlton in a day.

25 Q. You said less tar, less risk. So

1 is it your opinion that tar equates to risk?

2 A. Sure.

3 Q. And you just said it depends on
4 how you smoke?

5 A. That's correct.

6 Q. Can you explain that, please?

7 A. Well, we all smoke differently.
8 Not everybody inhales the same way; not
9 everyone takes as many puffs on a cigarette.
10 Some people leave their cigarette maybe in
11 the ashtray for half the cigarette. Some
12 people don't even smoke the cigarette all the
13 way down. Some people smoke it to the very
14 end of the filter. So there are all sorts
15 of variables.

16 Q. Is that what is meant by the term
17 smoker compensation?

18 A. Well, apparently that is the
19 terminology that is used today. It wasn't
20 -- it was not the terminology I was using
21 when I was working, even though you realized
22 that everyone smokes differently.

23 Q. Was there some other terminology
24 that was used --

25 A. No, there really wasn't any. We

1 just realized that people smoked differently,
2 which is why one cigarette can be, to one
3 person, may be harsh and to another person
4 it's smooth. It may have to do with the
5 way they smoke too.

6 Q. Did you ever do any consumer
7 research regarding smoker compensation or the
8 differences in the ways that people smoke
9 cigarettes?

10 A. It was -- not really, no, because
11 we knew that all people smoked differently.
12 I don't know how we would evaluate that. We
13 knew people smoked differently, and that
14 almost was a given. I'm not sure what we
15 would have gotten from that or what you
16 would learn other than that people smoke
17 differently.

18

19 Q. Would you have been aware if American
20 had done consumer research regarding smokers
21 compensation?

22 A. Later on --

23 MR. BASSETT: Object to the form.

24 THE WITNESS: -- I would have
25 been, but not earlier.

1 Q. (By Mr. Gruenloh) Later on being
2 when?

3 A. Oh, obviously in the '90s I would
4 have known. If you're not involved with
5 research, per se, there would be no reason
6 to share it early on.

7 Q. Let me ask you, in the 1960s,
8 would you have been aware if American was
9 doing consumer research regarding smoker
10 compensation?

11 A. I would not be.

12 Q. In the 1970s, would you have been
13 aware if American Tobacco was doing consumer
14 research regarding smoker compensation?

15 A. No. I would never have been
16 aware unless it related to what I was doing
17 or the research department thought I should
18 know about it because of what I'm doing,
19 unless it was in the '90s when we worked so
20 closely together and I was a senior officer
21 of the company.

22 Q. Are you saying research as in
23 R&D?

24 A. Yes.

25 Q. So any smoker compensation studies

1 that were done at American Tobacco would have
2 been done by your research and development
3 department?

4 A. Yes --

5 MR. BASSETT: Object to the form.

6 THE WITNESS: -- if such a thing
7 was done.

8 Q. (By Mr. Gruenloh) Okay. Were
9 you made aware of any such consumer research
10 studies regarding smoker compensation either
11 in the 1970s or the 1980s?

12 A. No, I was not.

13 Q. Were you made aware of any
14 consumer research studies that were conducted
15 by your R&D department performed in the 1990s
16 on smoker compensation?

17 A. No, I was not.

18 Q. Are you aware of any studies done
19 by American Tobacco whatsoever regarding
20 smoker compensation?

21 A. No, I'm not.

22 Q. Have you ever seen the term
23 smoker compensation used in internal memos,
24 either at American Tobacco or from other
25 tobacco companies?

1 A. No, I have not.

2 Q. Have you ever discussed this
3 issue, smoker compensation, with anyone at
4 American Tobacco or any other tobacco?

5 A. No, I have not.

6 Q. Have you ever discussed the term
7 smoker compensation with any lawyers?

8 A. No, I have not.

9 Q. When you met with these two
10 gentlemen, you didn't discuss that issue at
11 all?

12 MR. BASSETT: Object to the form.

13 THE WITNESS: I think they asked
14 me the same question you are asking, in so
15 many words. I don't know how it was worded.

16 Q. (By Mr. Gruenloh) Is smoker
17 compensation the same as nicotine titration?

18 MR. BASSETT: Object to the form
19 of the question.

20 THE WITNESS: I'm sorry, would
21 you say that again?

22 Q. (By Mr. Gruenloh) Is smoker
23 compensation the same as nicotine titration?

24 A. Titration. I have no idea.

25 Q. Do you know what nicotine

1 titration is?

2 A. No, I do not.

3 Q. Have you ever heard or seen that
4 term used?

5 A. No, I have not.

6 Q. Okay. Tell me why would a smoker
7 compensate?

8 MR. BASSETT: Object to the form
9 of the question.

10 THE WITNESS: That terminology,
11 again, is something more current. When I
12 say compensate, I said people smoked
13 differently.

14 Q. (By Mr. Gruenloh) Okay. Let me
15 ask using your terminology then. Why would
16 people smoke differently?

17 A. Good question. I don't know.
18 But because they do smoke differently, a lot
19 of times it is difficult to switch brands.

20 Q. Okay.

21 A. If you are smoking, for example,
22 Pall Mall, if you're used to a stronger
23 taste, you may take some time to adjust to
24 smoking a milder cigarette with a lighter
25 taste. It's just the way it is.

1 Likewise, if you're used to some
2 brands, you could be smoking a Marlboro or
3 Winston, you switch from one to the other,
4 you may not enjoy it as much. You may find
5 it's harsher, just because the draw on the
6 cigarette is different, maybe it gives you a
7 scratchy throat. You almost -- when you
8 pick a cigarette that you're comfortable
9 with, you smoke that a certain way, and you
10 can't assume that you get the same pleasure
11 by smoking another cigarette the same way.
12 Whether you go up in tar or down in tar.

13 Q. You just told me the differences
14 in the way people smoke is a good question,
15 and yet you testified earlier that you're
16 unaware of any studies regarding the
17 differences in the way people smoke or smoker
18 compensation; is that correct?

19 MR. BASSETT: Let me object to
20 the form.

21 THE WITNESS: That's correct.

22 Q. (By Mr. Gruenloh) Did you ever
23 wonder why people smoke differently and want
24 to know the answer?

25 A. We checked. We did research on

1 our products for harshness, for draw, and,
2 sure, that has to do with the way people
3 smoke, but you don't do one against the
4 other. You do it against the brand.

5 Is the draw too hard? Is it too
6 harsh? Is it perceived as being too strong?
7 But it was product-related testing.

8 Q. Can you tell me the ways, the
9 different ways you know of, that a smoker
10 could compensate or smoke differently?

11 A. I basically did. I mean --

12 Q. Could you list them for me?

13 A. Well, it is the draw on the
14 cigarette, number one.

15 Q. What does that mean?

16 A. How you (indicating) inhale on the
17 filter. The amount of I guess -- again, I'm
18 not a scientist. I don't know if it's the
19 amount of pressure you exert when you're
20 drawing in the smoke. That varies from
21 individuals.

22 Q. How hard you suck and how long
23 you do it?

24 A. That's right. And that varies.
25 And the frequency on a per cigarette basis

1 would vary from individual to individual.
2 That's basically, I would suspect, the two
3 major things.

4 Q. Any other ways that a smoker
5 could compensate?

6 MR. BASSETT: Object to the form.

7 THE WITNESS: I really don't
8 know. Those are the two that come to mind.
9 As a cigarette smoker, I mean, that is what
10 I have experienced myself.

11 Q. (By Mr. Gruenloh) What about
12 covering the air holes in a cigarette filter
13 with your fingers, would that be smoker
14 compensation?

15 A. It would change the way the
16 cigarette tastes, sure.

17 Q. Well, it would change more than
18 the way the cigarette tastes, wouldn't it, it
19 would change what the cigarette is intaking
20 into its body, wouldn't it?

21 A. Oh, sure.

22 MR. BASSETT: Object to the form
23 of the question.

24 THE WITNESS: It's kind of silly,
25 but, yes.

1 Q. (By Mr. Gruenloh) What's silly?

2 A. People occasionally would do that,
3 but they were doing it, they were fooling
4 themselves. They were changing the tar level
5 of the product. The holes were there for a
6 reason. In some of the ads it talked about
7 the air filtration system. They were there
8 for a purpose.

9 Q. You think the people that covered
10 up the holes in the filter knew what they
11 were doing and why they were doing it?

12 A. They knew that they were making
13 the cigarette a stronger taste, sure.

14 Q. Do you think that they knew the
15 health effects and consequences of what they
16 were doing?

17 MR. BASSETT: Object to the form
18 of the question.

19 THE WITNESS: Oh, I can't answer
20 that. I know that they knew -- they knew
21 they were making it a stronger cigarette.
22 People would buy cigarettes on sale that were
23 filter cigarettes and then take the filter
24 off and smoke it as a non-filter. Well,
25 obviously you're not getting the same tar

1 delivery when you do that as when you left
2 the filter on. It's the same thing.

3 Q. (By Mr. Gruenloh) If you look at
4 Exhibit Number 2 and Exhibit Number 3,
5 they've got pictures of Carlton cigarettes on
6 them.

7 A. That's correct.

8 Q. It doesn't show the front and the
9 back, but do you see anywhere on the front
10 of those boxes where it says don't cover the
11 air holes or you'll get a different product?

12 A. If you see, it says right on the
13 package air stream filter. You know what --
14 air stream filter means air stream. You
15 start covering up holes, you're eliminating
16 air stream.

17 Q. Does it say anywhere on the
18 package that if you cover up the holes of
19 this cigarette and the filter --

20 A. No, it does not.

21 Q. -- that you're going to receive
22 more tar and nicotine than printed on the
23 box?

24 A. No, it does not.

25 Q. Are you aware of any such message

1 ever printed on any Carlton box that had an
2 air stream filter?

3 A. No.

4 Q. When did you first learn about
5 smoker compensation?

6 MR. BASSETT: Object to the form
7 of the question.

8 THE WITNESS: As a layman, I was
9 aware everybody smoked differently. This is
10 not --

11 Q. (By Mr. Gruenloh) When did you
12 become aware of that?

13 A. Oh, for God's sake, probably as a
14 teenager.

15 Q. Do you know when American first
16 learned about smoker compensation?

17 A. Again, it's the terminology. That
18 people smoke differently, different people
19 smoke differently, I don't think that's a
20 surprise. I think anybody -- people that
21 smoke know they all don't smoke the same
22 way, which is why some of us don't enjoy
23 some cigarettes as much as others.

24 Q. Is there anyone who you can
25 remember at American who is particularly

1 knowledgeable about smoker compensation or the
2 differences in the way people smoke?

3 A. I would suspect if it was anyone,
4 it would have been in research. I mean, we
5 did have smoker panels.

6 Q. Who, in research, do you think
7 would have been most knowledgeable about that
8 specific subject?

9 A. That would have been Bob Sprinkle.
10 He was in charge of research.

11 Q. Where is Bob Sprinkle now?

12 A. He's deceased.

13 Q. How about the other gentleman you
14 told me before?

15 A. Dick Chumney.

16 Q. Can you spell his last name for
17 me?

18 A. C-H-U-M-N-E-Y.

19 Q. Where is he now?

20 A. He is retired. I haven't seen
21 him in a few years. He is probably in the
22 Richmond area, but I'm not sure.

23 Q. And he worked hand-and-hand with
24 Mr. Sprinkle in R&D; is that right?

25 A. Yes, he did.

1 Q. Do you know whether it was the
2 common perception of consumers at the time
3 that those two ads, Exhibit 2 and 3, were
4 published that less tar and less nicotine
5 means a less hazardous cigarette?

6 A. I don't know. Definitely, you
7 know, it could be. It could have been the
8 perception. We are saying it has less tar,
9 so, therefore, less risk. I guess you could
10 say that.

11 Q. Do you think a reasonable person
12 could reach that conclusion by looking at
13 these ads that less tar means less risk,
14 means less hazardous?

15 MR. BASSETT: Object to the form
16 of the question.

17 THE WITNESS: Sure.

18 Q. (By Mr. Gruenloh) And just to be
19 sure on this point, you are unaware of any
20 study at American, any consumer research
21 study, polling, focus groups, anything like
22 that, that American ever did regarding that
23 specific subject, the perception of consumers
24 as it relates to tar and nicotine in
25 cigarettes?

1 A. Other than what we discussed
2 earlier with focus groups on Carlton, I'm not
3 aware of any research.

4 Q. When I asked you earlier about
5 that though, I asked you about any specific
6 findings as to that.

7 A. And I said it was all
8 qualitative, right. Correct.

9 (Plaintiff's Exhibit-4 was marked
10 for identification.)

11 Q. (By Mr. Gruenloh) Mr. Gesell, I
12 handed you what has been marked as Exhibit 4
13 to the deposition. Do you recognize this
14 document?

15 A. Not this particular one, but it
16 is a press release from the parent company.

17 Q. Okay. Have you ever seen it
18 before?

19 A. If I do, I don't recall. I
20 mean, this goes back quite a way.

21 Q. Do you know whether it was
22 released when you were an employee at
23 American Tobacco?

24 A. It says it was. I'm sure it
25 was, sure.

1 Q. Let's see it for just a second.

2 Can you look at the third
3 paragraph, please? If you would, please read
4 aloud the first sentence of that third
5 paragraph.

6 A. In the early 1960s, The American
7 Tobacco Company recognized the need for a
8 low-tar cigarette and assigned the development
9 of such a product to its department of
10 research and development.

11 Q. Now, that says that The American
12 Tobacco Company recognized the need for a
13 low-tar cigarette, not the need for a milder
14 tasting cigarette, doesn't it?

15 A. It's what it says, yes.

16 Q. Why do you suppose that American
17 recognized the need for a low-tar cigarette
18 in 1964?

19 A. I don't know. Maybe there was
20 some consumer demand. I really don't know.
21 I mean, it's possible. They may have done
22 some research. I'm just not aware of it.

23 Q. Well, was there anything that
24 occurred in the early 1960s that may have
25 clued-in American to the need for a low-tar

1 cigarette?

2 MR. BASSETT: Object to the form
3 of the question.

4 THE WITNESS: I don't recall at
5 what point in time we had the Reader's
6 Digest articles on tar levels. There were a
7 number of those. When those articles started
8 to appear, it may have started around this
9 time. It may even have been a little
10 earlier and then the company said, gee, let's
11 see if we can be a pioneer in this category.

12 So it may have been based on
13 whatever the public -- what the public
14 perceived, what the public said that they
15 wanted and based on articles and magazines
16 and newspapers.

17 Q. (By Mr. Gruenloh) Are you aware
18 of any studies that were done at or about
19 that time regarding consumer research that
20 would have indicated that consumers were
21 asking for a low-tar cigarette?

22 A. No, I'm not.

23 Q. Were part of your job
24 responsibilities at American establishing a
25 smoker profile for Carlton cigarettes?

1 MR. BASSETT: Object to the form
2 of the question.

3 THE WITNESS: We had a profile on
4 our smokers that we could get them for,
5 sure. And by smoker profile, we had
6 demographic information on a lot of our
7 smokers, and we used that for direct
8 marketing efforts.

9 Q. (By Mr. Gruenloh) Okay. But
10 specifically Carlton cigarettes, were you
11 involved with either developing or determining
12 a smoker profile for the smokers of Carlton
13 cigarettes?

14 MR. BASSETT: Object to the form.

15 THE WITNESS: The smoker profile
16 was developed, in a lot of cases, by outside
17 services, outside -- you know, we used -- we
18 hired companies to gather data for us. We
19 really didn't do that internally. And it
20 would be even gleaned from magazine
21 readership.

22 Carlton smokers that read certain
23 magazines, if certain magazines -- let's for
24 argument sake say 80 percent of Better Homes
25 and Garden readers are women over the age of

1 whatever, 40. And if we have a high
2 incidence of their smoker readership with
3 Carlton, that told us something. So it was
4 developed, using -- through the advertising
5 agencies, using magazine data. It was
6 developed outside by direct marketing firms.
7 We didn't really develop it inside. And we
8 used the data.

9 Q. (By Mr. Gruenloh) Okay. So you
10 at American never did any consumer research
11 to figure out who was smoking your
12 cigarettes?

13 MR. BASSETT: Object to the form.

14 THE WITNESS: We hired outside
15 firms to do it for us, yes.

16 Q. (By Mr. Gruenloh) But I'm
17 talking about in-house at American.

18 A. We didn't have the resources to
19 do the actual research to find out who is
20 smoking your brand. You had to hire outside
21 firms.

22 Q. Who was the outside firm you
23 hired to do that research?

24 A. It varied. There was no one
25 firm. We used various promotional firms,

1 advertising agencies. We had one promotional
2 firm in the late '80s and early '90s -- all
3 the way through '94 that handled our direct
4 marketing database, and they hired firms to
5 get data for them.

6 So it wasn't one firm. There
7 were a number of them.

8 Q. Do you remember what the primary
9 firm that did this work was in the 1970s?

10 A. In the 1970s, probably most of
11 the information we had on our smokers
12 probably came from the publications, the
13 magazines, which then that would then be
14 collated through the advertising agencies.

15 Q. How did that work? A consumer
16 answered a --

17 A. A questionnaire from the magazine.

18 Q. -- questionnaire in a magazine?

19 A. Exactly, exactly.

20 Q. And then it said at the bottom,
21 please forward your response to such and
22 such?

23 A. Well, it goes back to the
24 publication, and the publication would use
25 that data for any product for their

1 advertisers to tell them something about
2 which of their products -- actually telling
3 you, gee, maybe you should advertise this
4 product in our magazine because a competitor
5 of yours does very well. We have a lot of
6 smokers, that type of thing.

7 Q. What were the findings that you
8 got back regarding the smoker profile of
9 Carlton cigarettes? Who smokes Carlton
10 cigarettes?

11 A. Well, the cigarette smoker skewed
12 older, I think it was 35 plus.

13 Q. This is Carlton smokers; correct?

14 A. Correct.

15 Q. Anything else?

16 A. And it skewed more female. I
17 think it was like 55/45.

18 Q. What else?

19 A. Oh, demographics, I don't know, it
20 was -- I don't remember the income ranges
21 anymore, but they tended to be a little
22 higher income. High school graduate, college
23 graduate, that type of thing. I can't
24 remember with specifics anymore. It has been
25 quite a while.

1 Q. I take it from the fact that
2 Carlton cigarettes are smoked by people who
3 are 35 years plus, that Carlton isn't what
4 you would consider a starter brand of
5 cigarettes; is that correct?

6 A. That is correct.

7 Q. How would you characterize Carlton
8 cigarettes?

9 MR. BASSETT: Object to the form
10 of the question.

11 Q. (By Mr. Gruenloh) If it's not a
12 starter brand, is it a cigarette that people
13 switch to?

14 A. Well, sure, if it is not a
15 starter brand, it is a brand that people
16 switch to. Sure. It is a brand people
17 switch to who wanted lower tar.

18 Q. And were you aware that the main
19 group of your consumers for Carlton
20 cigarettes were folks who were going to be
21 switching from another cigarette over to
22 Carlton?

23 A. Well, they -- that is exactly
24 what they did, yes.

25 Q. So you're aware of that fact?

1 A. Oh, sure. We knew, later on we
2 would know from which brands our smokers were
3 coming from too, sure, how many
4 percentage-wise from Merit and from Marlboro
5 and --

6 Q. Do you remember any of those
7 figures?

8 A. No. The statistics changed from
9 year to year.

10 Q. Did you tailor your marketing
11 efforts to the fact that you knew that folks
12 were going to be switching to Carlton as
13 opposed to if it was a starter brand?

14 A. No. We tailored the advertising
15 to the audience that enjoyed the product,
16 which means we would advertise in
17 publications that had, for instance, their
18 primary audience was 35 plus, for the most
19 part.

20 And maybe the advertising was
21 weighed more towards magazines that had
22 appeal to women versus men because the smoker
23 profile indicated a little higher percentage
24 of women smoking the product.

25 Q. Now, we talked earlier about the

1 concept of less tar being less risk and,
2 therefore, less hazardous. Did you take that
3 into account in your marketing strategies?
4 Did you say we are going to use this concept
5 that folks are going to be switching over to
6 Carlton because they believe that they are
7 going to a less hazardous cigarette or a
8 less risky cigarette?

9 A. First of all, I said you could
10 perceive it. A consumer could perceive,
11 could assume that. Some consumers might.

12 Q. But you also testified that it
13 was your opinion that less tar meant less
14 risk?

15 A. Yes, less tar meant less risk,
16 but you could get less tar by smoking less
17 cigarettes, to be quite frank with you.
18 There are people, they want to cut down
19 their risks, instead of smoking a pack, they
20 smoke half a pack. So you could do that
21 rather than switching to another brand. So
22 there are different ways of doing it is the
23 point I'm trying to make.

24 Q. And if you want to cut down the
25 risk altogether, you just wouldn't smoke; is

1 that correct?

2 A. That is correct. That is
3 correct. I'm sorry, so I lost the question.

4 Q. So my question was, did you
5 tailor your marketing activities, your
6 marketing slogans and campaigns, to the fact
7 that you knew that you had consumers who
8 would be moving to Carlton from other
9 cigarettes that had high tar to Carlton which
10 has low tar?

11 A. I'm not sure what you mean by
12 tailored. Sure, I told you we advertise in
13 certain books. We would specify, for
14 instance, on this ten to one ad to show the
15 relationship in tar by the FTC method of,
16 let's say, a Marlboro versus a Carlton. So
17 I don't know if we did any tailoring. I
18 don't know how we would have done that.

19 We only used general advertising
20 mediums, other than the direct marketing.
21 Direct marketing you could look at which
22 percentage of brands you're getting most of
23 your smokers from, let's say, that year.
24 And if it turns out it was a lot of Merit
25 smokers, maybe we would offer Carlton coupons

1 to Merit smokers in the mail, if we had
2 their names. So that we would do.

3 Q. Did you ever do any consumer
4 research to determine why Carlton smokers
5 switched from their other brands?

6 A. It was really for lower tar. I
7 mean, we did say Carlton was lowest, and
8 that was very straightforward.

9 Q. So is the answer to my question,
10 yes, that you did do consumer research?

11 A. Not specifically for that, but
12 when you would ask questions, sure, it would
13 come out, I smoke Carlton because it's the
14 lowest, and being 99 percent of our smokers
15 came from other brands, obviously that was
16 the answer. They switched because it was
17 the lowest.

18 And then we had obviously all
19 those Carlton smokers we lost who went to
20 other brands because they didn't like the
21 taste. They would switch and they'd go back
22 to someone else. So someone would go to
23 Merit and smoke Carlton and then go smoke
24 another brand, true.

25 Q. Do you believe that smokers who

1 had previously smoked another brand switched
2 to Carlton because they were particularly
3 concerned with their health?

4 A. That could be one of the reasons.
5 That is an acceptable premise.

6 Q. It certainly is reasonable since,
7 in your own words, less tar means less risk;
8 correct?

9 MR. BASSETT: Object to the form
10 of the question.

11 THE WITNESS: Well, yeah, that is
12 what I said.

13 Q. (By Mr. Gruenloh) Do you know
14 what the Tar Impact Program is?

15 A. Tar Impact?

16 Q. TIP, the Tar Impact Program?

17 A. I don't know. That doesn't ring
18 a bell. That doesn't mean I didn't know.
19 I just don't know right now. It doesn't
20 ring a bell.

21 Q. What about the Thought Leader's
22 Advertising Campaign, do you know what that
23 is?

24 A. Yes.

25 Q. Can you tell me what that was?

1 A. From what I recall in the late
2 '70s, that was a selection of publications
3 where we ran Carlton ads. And they were
4 very upscale publications. In fact, for all
5 I know, Thought Leaders may have been the --
6 not our terminology, it may have been the
7 terminology of the people who sold us the ad
8 space, because they sold a package of like
9 five or six books. And the only one I
10 remember is Atlantic Monthly, but it was a
11 bunch of very limited circulation magazines,
12 and you bought it as a package deal.

13 Q. What was the purpose of that
14 program?

15 A. Well, I guess it was a -- I
16 guess it was to get the people who read
17 these publications, if they smoked, to smoke
18 Carlton. And it could have been cocktail
19 party set and maybe some of the other
20 smokers would emulate these smokers and
21 switch from Marlboro to Carlton.

22 Q. Do you know what they meant by
23 the term Thought Leaders?

24 A. No. I think it was really just
25 a little moniker that was given by the

1 people who sold the ad space, because it was
2 the people who -- they were very upscale
3 books. I think maybe some of the books
4 maybe had had articles in from the secretary
5 of state. They were specialty books, limited
6 audiences, maybe 5,000 circulation, 10,000
7 circulation.

8 Q. All right. So the term Thought
9 Leaders wasn't come up by someone at American
10 Tobacco?

11 A. I don't believe so, no.

12 Q. Do you have any idea what the
13 results of that program were?

14 A. It could have been --

15 MR. BASSETT: Object to the form.

16 THE WITNESS: It couldn't have
17 been too successful. We didn't keep it very
18 long. It was gone in the early '80s.

19 Q. (By Mr. Gruenloh) '78 to early
20 '80s?

21 A. Early '80s at some point. We
22 just discontinued that program.

23 Q. Was there someone who was in
24 charge of the Thought Leader's program, that
25 you can remember at American?

1 A. It really wasn't a program. It
2 was a space buy, magazine space buy. So
3 there was no program to be in charge of.
4 And you really didn't measure anything. It
5 was just publications where you put -- where
6 you ran ads, and the ads that we ran were
7 Carlton ads.

8 Q. Do you remember who came up with
9 the idea to do this?

10 A. No, I don't. It could have been
11 anyone. It could even have been the
12 advertising agency.

13 Q. Was there a product manager of
14 new products in 1978 or whenever the Thought
15 Leader's Program was developed?

16 A. No, there was not.

17 MR. GRUENLOH: Okay. Why don't
18 you give me about five minutes to get my
19 notes together and then I can probably wrap
20 it up in about an hour after that. Is that
21 agreeable to you?

22 MR. BASSETT: That is fine.

23 THE WITNESS: Sure.

24 THE VIDEOGRAPHER: We are off the
25 video record at 1:09.

1 (A recess was taken.)

2 THE VIDEOGRAPHER: We are on the
3 video record at 1:28.

4 Q. (By Mr. Gruenloh) Mr. Gesell,
5 would you say that Carlton is a
6 health-oriented brand of cigarettes?

7 A. No, I wouldn't use that
8 terminology. I would say it is a low-tar
9 cigarette, a very low tar. That is not
10 terminology I would use.

11 Q. Is your problem with that
12 terminology that you don't equate low tar
13 with health? Is that the difficulty that
14 you have with that terminology?

15 MR. BASSETT: Object to the form
16 of the question.

17 THE WITNESS: My problem is I
18 don't equate cigarette smoking with health,
19 because we know there is a risk. So I
20 wouldn't use that terminology.

21 Q. (By Mr. Gruenloh) Who knows
22 there is a risk?

23 A. Well, the Surgeon General says
24 there's a risk. The caution -- the warning
25 notices on the pack say there's a risk.

1 Consumers know there's a risk. I find it
2 incomprehensible that the consumer doesn't
3 know there is a risk in smoking.

4 Q. Do you believe that Carlton's copy
5 strategy in the mid 1970s attempted to appeal
6 to smokers who were concerned with the health
7 hazards of cigarette smoking?

8 MR. BASSETT: Let me again object
9 to the form of the question.

10 THE WITNESS: People who were
11 interested in less tar, so, therefore, sure,
12 they may have felt that this would be a
13 better cigarette for them to smoke.

14 Q. (By Mr. Gruenloh) When were
15 Carlton cigarettes first offered in a box as
16 opposed to a soft carton?

17 A. In the mid '70s. Again, this is
18 historical for me, but it would have been
19 around '76.

20 Q. So you didn't have anything to do
21 with the decision to put them in a box as
22 opposed to a soft package?

23 MR. BASSETT: Object to the form
24 of the question.

25 THE WITNESS: They were originally

1 in a soft package, and the box packing was
2 an additional style that complimented the
3 line. It didn't replace the soft packing.

4 Q. (By Mr. Gruenloh) But were you
5 involved with the decision to market a brand
6 that was in a box as opposed to a soft
7 package?

8 A. Not that particular one, no. I
9 had been involved in promoting picking a box
10 over a soft pack.

11 Q. In what brand?

12 A. We originally promoted very
13 heavily the Lucky Strike filters in the box
14 packing. We introduced it -- and, of
15 course, times have changed, and I don't know
16 the marketplace of the year 2000, but box
17 packings were a certain percentage of the
18 market.

19 Most smokers smoked the soft pack.
20 Marlboro was the big box packing. And Lucky
21 filters, we had hoped the audience would be
22 Marlboro smokers, so we came out with a box
23 packing. Some people prefer the box packing,
24 and most people prefer the soft packing.
25 It's really not interchangeable.

1 Traditionally people who smoked a
2 soft pack don't smoke a box. People who
3 don't smoke a box -- if they smoke a soft
4 pack, they don't smoke a box. If they smoke
5 a box, they don't smoke a soft pack,
6 traditionally. There is a preference in the
7 feel of the pack and many different reasons,
8 smoking habits, the way you take the
9 cigarette out of the pack.

10 Q. Did American ever do any research
11 regarding the acceptability of cigarettes in
12 a box versus the acceptability of cigarettes
13 in a soft package?

14 A. Not that I'm aware of. I mean,
15 we knew that, again, people had preferences.
16 Most people preferred soft packs, but people
17 did -- some people did prefer box packings.

18 Q. How did you know that people had
19 preferences, if you didn't do research?

20 A. I think it was pretty much common
21 knowledge that it was not interchangeable.
22 You could go in and ask retailers. You
23 could do what we call ma and pa research,
24 you know, whatever the terminology is you
25 want to use.

1 You could go into retailers and
2 ask them, gee, you carry that both in the
3 soft pack and the box. Do you -- and they
4 would tell you, oh, no, no, so and so, and
5 so and so buy the box packing, they wouldn't
6 buy the soft pack.

7 So a lot of it could be just
8 informal research, but it was pretty
9 well-accepted.

10 Q. Well, there is a significant cost
11 associated with changing the packaging of the
12 cigarette, isn't there?

13 MR. BASSETT: Object to the form
14 of the question.

15 THE WITNESS: Yeah, but we're not
16 talking here about changing the packaging for
17 the cigarette. In the case of Carlton, it
18 was an addition to the line, sure.

19 Q. (By Mr. Gruenloh) But you could
20 have used soft packaging as opposed to box
21 packaging; isn't that correct?

22 MR. BASSETT: Object to the form
23 of the question.

24 THE WITNESS: Not in that
25 instance. There could have been more

1 confusion on the product because they had
2 different tar levels.

3 Q. (By Mr. Gruenloh) Okay. But it
4 is your testimony here today that American
5 never did any specific consumer research to
6 determine whether consumers preferred box
7 packaging over soft packaging?

8 A. That is not what I'm saying. I'm
9 saying that it was common knowledge that
10 there were preferences. We knew, in the
11 industry, how many soft packs were sold
12 versus how many box packings were sold. I
13 don't know of any research that was done,
14 but it probably would have been a waste of
15 money. I'm not sure why we would have done
16 that.

17 Q. All right. A second ago you said
18 you were involved in the efforts to produce
19 Lucky Strike; is that what you said --

20 A. Lucky Strike filters.

21 Q. -- Lucky Strike filters in a box
22 as opposed to soft package.

23 Did you do any consumer research
24 prior to packaging them in a box to
25 determine consumer acceptability?

1 A. No, we did not. What we did was
2 we knew we were looking to attract the
3 Marlboro box smoker, and so that is why we
4 came out with a box. And it didn't work.

5 Q. What is the box smoker looking
6 for as compared to the soft package smoker?

7 A. It is a different feel in the
8 product. It has a -- obviously, it fits in
9 a pocket differently. You open it
10 differently. You may even go to light the
11 product differently.

12 With a soft pack, a lot of people
13 tap the pack and take a cigarette out. With
14 a box, a lot of people flip the box open
15 with one hand and use their lips to take it
16 out. So it's a different smoking experience,
17 because the lighting of the cigarette and the
18 handling of the cigarette is all part of the
19 experience. It becomes the way you smoke.

20 And if you get used to doing it
21 a certain way, that's the way you're most
22 comfortable doing it.

23 Q. So are you telling me the only
24 reason that you developed box packaging is
25 because the novelty of the packaging itself,

1 there was no underlying reason?

2 A. It was called -- originally the
3 Marlboro packaging was called a crush-proof
4 box. Okay? So there was a value, if you
5 wanted a crush proof box, so they didn't get
6 crushed in your shirt.

7 If you worked outside and you
8 were constantly lifting something and maybe
9 pressing it against your shirt, you would
10 want a crush-proof box.

11 So they were convenience
12 packaging, if you thought it was a
13 convenience. And that depends on the
14 individual consumer.

15 Q. What do you believe the reason to
16 be for American producing Carlton 100s in a
17 box as opposed to a soft package?

18 A. You mean the kings, not the 100s,
19 or you mean the 100s?

20 MR. BASSETT: Object to the form.

21 THE WITNESS: The 100s were
22 produced in both.

23 Q. (By Mr. Gruenloh) Why were they
24 produced in both?

25 A. To appeal to different smokers.

1 But they were -- originally we're talking
2 about the kings box, which had a different
3 tar level than the king soft pack. And I
4 said the reason we came out in the box was
5 obviously so there would be less confusion.

6 You didn't want to confuse the
7 two products. So they looked different.
8 One's in a box and one's in a soft pack;
9 and one had one tar level and one had
10 another.

11 Q. Is that the only difference
12 between the Carlton 100s in a box and the
13 Carlton 100s in the soft package?

14 A. That is the Carlton king.

15 MR. BASSETT: Let me object to
16 the form of the question.

17 THE WITNESS: The Carlton king is
18 what I was addressing.

19 Q. (By Mr. Gruenloh) Okay.

20 A. One had different tar levels,
21 which, obviously, different tastes.

22 Q. But there were Carlton 100s that
23 were in a box; correct?

24 A. They still are, correct.

25 Q. And there are Carlton 100s that

1 are in a soft package?

2 A. Right.

3 Q. What are the differences, if there
4 are any, between the Carlton 100s that are
5 in a soft package and the Carlton 100s that
6 are in a hard package, in a box?

7 A. There were tar differences. I
8 don't know if there are today. They weren't
9 the exact same product. I don't know if
10 they are today.

11 Q. Do you know what the tar
12 differences were?

13 A. It depends on time. I mean, even
14 Carlton king soft pack went down in tar from
15 like seven milligrams to one, over a period
16 of 20 some odd years. The Carlton soft
17 pack, if I recall, was at one point two or
18 three, and I'm not sure what the Carlton
19 100s box was. Eventually it ended up one in
20 the '90s.

21 Q. Would it be accurate to say that
22 the Carlton 100s in the box had less tar in
23 them than the Carlton 100s in the soft
24 package?

25 A. I'm not sure of the point in

1 time. They may have.

2 Q. When were they first developed,
3 the Carlton 100s in a box?

4 A. I recall the Carlton 100s in a
5 box as a successful addition to the line and
6 doing well, believe it or not, in the late
7 '80s or early '90s.

8 Q. But when were they developed?

9 A. I don't recall. I mean, the
10 original entries were the king soft pack and
11 box, and then we had the menthols. The 100s
12 came later, and I don't really recall when
13 they were introduced. They came later.

14 Q. Was it in the '80s?

15 A. '70s or '80s. It was later, the
16 100s, because the focus of the -- originally
17 it was a king brand. I mean, it was --
18 the 100s came on later.

19 Q. Okay. If we look at the Carlton
20 100s that were produced in the late '70s
21 that were produced in the hard box and we
22 compare them to the Carlton 100s that were
23 produced in the late '70s in a soft package,
24 what were the differences?

25 A. If I recall, there was a

1 different tar level.

2 Q. Do you remember what the
3 difference in tar level was?

4 A. No, I do not. I mean, that is
5 readily identifiable because you just check
6 the packaging for that period of time.

7 Q. Were there any other differences
8 between those two packages of cigarettes?

9 A. Well, if the tar level was
10 different, then also the taste would also
11 have been different. It's possible the
12 flavorings could have been different too. It
13 probably might have had a little bit
14 different blend.

15 Q. Was there less tar in the box
16 100s or was there more tar in the box 100s
17 than the soft package?

18 A. Well, the ad I have here is box
19 100s, which has one milligram. I know the
20 soft pack was more at one point than that.

21 Q. The ad that you have right there
22 is, I think, 1980 or the early '80s?

23 A. 1980.

24 Q. I'm talking about when they were
25 first developed in the late '70s. Do you

1 recall whether the Carlton 100s in a box had
2 more or less tar in them than the Carlton
3 100s in a package?

4 A. I do not recall.

5 MR. BASSETT: Object to the form.

6 THE WITNESS: My recollection is
7 that as a soft pack had higher tar, but
8 again, that could be checked, because it
9 would be on the package. They were not
10 always the same, is the point I'm trying to
11 make.

12 Q. (By Mr. Gruenloh) The differences
13 between the two packages, and we're still in
14 the late '70s when it was first developed,
15 the differences between the two packages, the
16 box pack and the soft pack, were the
17 differences in the tar substantial or were
18 they minor?

19 MR. BASSETT: Object to the form
20 of the question.

21 THE WITNESS: That is all
22 relative.

23 Q. (By Mr. Gruenloh) How would you
24 characterize them?

25 A. Relative to the family, I could

1 say if you cut it by 50 percent, you could
2 say that's substantial. But relative to a
3 change for a Marlboro wouldn't even be
4 mentioned, because you're talking one
5 milligram of tar. So you have to talk
6 relative to the franchise.

7 Q. Do you know if there were
8 separate marketing programs or ad campaigns
9 done for the Carlton 100s in the soft
10 package and the Carlton 100s in a box
11 package?

12 A. Well, the campaign umbrella was
13 always Carlton is lowest, and different
14 brands could be featured at different times
15 for different reasons.

16 So different campaigns know, they
17 were all -- whenever there was a brand, a
18 style featured, forgetting about the specific
19 line relative to the brand, it was always in
20 conjunction with the Carlton is lowest
21 umbrella.

22 Q. Look at Exhibit 2, which I think
23 you have in front of you now.

24 A. Exhibit 2, that's correct.

25 Q. On the left there it says Carlton

1 box, lowest of all brands. It doesn't
2 say --

3 A. That is correct.

4 Q. -- Carlton soft package, lowest of
5 all brands?

6 A. That's correct.

7 Q. So there's obviously a difference
8 in the tar content of the two cigarettes;
9 correct?

10 A. I said that earlier.

11 Q. Was there a separate ad campaign
12 or marketing slogan that you had for the
13 Carlton soft package? Because here it says
14 Carlton box on Exhibit 2.

15 A. I'm not sure I follow what you're
16 saying.

17 It says Carlton's box is lowest
18 of all brands. That's correct.

19 Q. Right.

20 A. If we were, later on -- anyhow,
21 there are ads there which talk about Carlton
22 king soft pack being the lowest soft pack,
23 versus the lowest of all brands. Lowest
24 king soft pack. So there --

25 Q. And again, Mr. Gesell, the only

1 differences that you know of in the
2 customer's perception of the packaging relate
3 to the novelty of the packaging?

4 MR. BASSETT: Object to the form
5 of the question.

6 THE WITNESS: I don't understand.
7 I don't follow you.

8 Q. (By Mr. Gruenloh) Well, when I
9 asked you this question before about any
10 studies or research that you may have done
11 on consumer acceptability over hard pack
12 versus soft pack cigarettes, you said, you
13 talked about how some people wanted them not
14 to crush in their --

15 A. That's correct. I wouldn't call
16 that novelty, but, yeah, it's --

17 Q. How would you characterize it?

18 A. Personal preference.

19 Q. Personal preference of the
20 packaging itself?

21 A. That's correct. Correct. And I
22 -- yeah. A soft pack versus a box
23 packaging, yes, that's correct.

24 Q. Okay. After the Carlton 100s box
25 hard pack were marketed and after they began

1 being sold, did you ever do any research
2 after that to determine whether consumers
3 liked the box packages better than the soft
4 packages?

5 A. No, because we sold both. No.

6 Q. Do you recall -- let's again
7 begin in the late '70s. Do you recall in
8 the late '70s whether you sold more box
9 packages or more soft packages of Carlton
10 100s?

11 A. I can't tell you for sure, but at
12 a high level of probability, we sold much
13 more soft pack.

14 Q. All right. Let's talk about
15 production for a second.

16 Did you produce the same amount
17 of Carlton soft pack 100s, as Carlton soft
18 pack 100s in the box?

19 MR. BASSETT: Object to the form
20 of the question.

21 THE WITNESS: No. Production was
22 based on consumer demand. So -- and sales
23 projections were based on past performance
24 and growth trends. I'm confident that at
25 that point in time the soft pack was the

1 bigger style so, therefore, you would have
2 produced more cigarettes.

3 Q. (By Mr. Gruenloh) And you're
4 basing consumer demand upon consumer research
5 or upon what you're selling?

6 A. Consumer demand means consumer
7 pull for what they're buying at retail.

8 Q. Did you do specific consumer
9 research to determine whether consumers were
10 buying more soft pack 100s or more hard box
11 pack 100s?

12 MR. BASSETT: Object to the form
13 of the question.

14 THE WITNESS: Well, it would be
15 self-evident just by the volume out of the
16 stores and the store re-order patterns.

17 Q. (By Mr. Gruenloh) Well, that's
18 what I asked you. Is it based upon demand
19 or is it based upon consumer research? And
20 you told me it was based on polling a second
21 ago.

22 A. Polling?

23 Q. I thought that's what you said?

24 A. I never said such a thing.

25 MR. BASSETT: No.

1 Q. (By Mr. Gruenloh) All right.

2 Well, what is it based on?

3 A. Ask the question one more time.

4 We got a little lost from the original
5 question.

6 Q. Okay. How did you determine
7 whether there was consumer demand for the
8 soft pack 100s over the box pack 100s?

9 A. Are we talking about after the
10 product was already in the marketplace?

11 Q. Let's do both. Let's start
12 before it was on the marketplace.

13 A. Originally when any product was
14 introduced, I don't care if it's Carlton 100s
15 box or whatever the brand was, you would
16 have what we would call -- we would put out
17 a pipeline quantity of cigarettes, which is
18 our estimate based on the number of retail
19 stores in the United States and the number
20 of stores that we called on, on how many
21 cartons of cigarettes we would need to stock
22 these stores with cigarettes.

23 Once you have done that, then you
24 start to get a quick read on consumer
25 demand, the movement out of the stores. And

1 based on the movement is how you schedule
2 your production to replenish the inventories
3 at retail.

4 Q. Okay. After the cigarettes are
5 on the market, how do you determine consumer
6 demand then?

7 A. By movement out of retail. We
8 called on 150,000 stores. We know what was
9 selling off the shelves. The retailers have
10 to replace that merchandise by ordering it
11 from a distributor. The distributor has to
12 replace his inventory by ordering it from us.
13 So we know what the demand is.

14 Q. If we go back in history from '95
15 until the early '70s when the Carlton 100s
16 box pack was first introduced, were more soft
17 pack 100s sold or were more box 100s sold?

18 A. Over that period of time,
19 obviously more soft packs were sold. It was
20 a bigger brand. Soft pack for American
21 Tobacco was just bigger in volume. We just
22 didn't do as well with the box packings. We
23 had a number of box packings. They just
24 weren't as successful.

25 Q. And you produced less box packs,

1 Carlton box pack 100s, than soft pack 100s;
2 isn't that correct?

3 MR. BASSETT: Object to the form
4 of the question.

5 Q. (By Mr. Gruenloh) During that
6 same period.

7 A. Over the period of time, obviously
8 we were selling more 100 soft packs, we
9 obviously would produce more 100 soft packs.

10 Q. Do you have any idea what the
11 specific numbers on sales of box pack 100s
12 versus soft pack 100s are?

13 A. No. You saw so many numbers over
14 all those years, I don't recall anymore.

15 Q. What about production, do you have
16 any idea on specific numbers of soft pack
17 100s versus hard pack?

18 A. No. The sales data is readily
19 available. I mean, I don't recall all the
20 numbers anymore.

21 Q. Is there someone who would be
22 more knowledgeable about those sales numbers
23 than you would be, than you are?

24 A. All you need is a bookkeeper, I
25 mean, someone who can actually look at the

1 numbers. It's not the kind of thing you
2 recall.

3 We're talking billions of
4 cigarettes and all sorts of different styles,
5 and changes from year to year.

6 Q. I understand your answer, but my
7 question is, is there somebody who would be
8 more knowledgeable about those figures than
9 you are?

10 MR. BASSETT: Object to the form.

11 THE WITNESS: I doubt it.

12 Q. (By Mr. Gruenloh) Okay. Can you
13 tell me what your overall marketing budget
14 was at American in 1979 when you first
15 started working in the cigarette division?

16 A. Oh, this is rough. The marketing
17 budget was primarily the advertising. That
18 probably was somewhere in the area of about
19 50 million dollars.

20 Q. What about 1985? Same question.

21 A. It was comparable. There was a
22 period of time where it went down a little
23 bit and then it went up again, but it was
24 probably comparable. It was just the money
25 was spent on different brands at different

1 periods of time. It wasn't constant on any
2 one brand.

3 Q. You said it is comparable. Does
4 that mean it's roughly the same, 50 million?

5 A. Roughly the same, sure.

6 Q. In 1985?

7 A. Yes.

8 Q. All right. What about 1990, do
9 you recall what the advertising budget was?

10 A. Our advertising budgets tended to
11 stay in that general range. It went down
12 during a period of the '90s because of the
13 amount of price promotion that was done in
14 the industry and the amount of couponing.

15 It may have -- it went down at
16 one point in the '90s to maybe half that for
17 a short period of time, but that was
18 basically the amount of money over the years
19 that we would spend every year on
20 advertising.

21 Q. Do you recall, let's again deal
22 with 1979 first, do you recall what your
23 marketing budget for Carlton 100 soft packs
24 were?

25 A. The budgets weren't developed that

1 way. They were developed by brand versus by
2 style. So it would be -- there would be X
3 number of dollars for Carlton, and there
4 would have been X number of dollars for
5 Tareyton, and there would have been X number
6 of dollars, at that point in time, in '79,
7 for Pall Mall. And most of it was split
8 between Carlton and Tareyton, but I can't
9 tell you how much.

10 Q. Well, that same time period, 1979,
11 do you know what your advertising budget was
12 for Carlton?

13 A. It would be a rough estimate. I
14 mean, I was handling Tareyton and Carlton, I
15 think we were spending about the same thing.
16 So it was probably 20 some odd million
17 dollars -- twenty million plus, but I can't
18 tell you exactly what.

19 Q. Close to half of the overall --

20 A. I would suspect it was probably
21 close to half.

22 Q. And again, that is -- okay. That
23 is for Carlton cigarettes; correct?

24 A. The entire family of Carlton
25 cigarettes, that's correct.

1 Q. Have you ever heard the term
2 health scare?

3 MR. BASSETT: Object to the form.

4 THE WITNESS: Yes, I have, but
5 I'm not sure I know in what context.

6 Q. (By Mr. Gruenloh) Have you ever
7 heard the term health scare in the context
8 of smoking and health, cigarette smoking?

9 MR. BASSETT: Same objection.

10 THE WITNESS: Maybe it is
11 something recently that I have heard, but it
12 is not something that, thinking back, that
13 rings a bell of any kind.

14 Q. (By Mr. Gruenloh) Are you aware
15 of the Surgeon General's reports on smoking
16 and health?

17 A. A number of them, in general
18 terms.

19 Q. Have you reviewed them?

20 A. I read some of them, not all of
21 them. And I really don't recall the
22 details.

23 Q. Can you tell me which ones that
24 you've read or reviewed?

25 A. No, I can't. I mean, I was in

1 the marketing end of the business from '79
2 through, obviously, as you know, through the
3 early '90s. I reviewed a number of them.

4 Q. I assume that American Tobacco
5 kept numbers regarding the consumption of
6 cigarettes, how many were being sold; is that
7 correct?

8 A. Oh, sure.

9 Q. Are you aware of those numbers?

10 A. Again, I knew them at one point.
11 All of that data is readily available, sure.

12 Q. Would you consider one of your
13 job duties or responsibilities at American
14 Tobacco to be why people are smoking?

15 MR. BASSETT: Object to the form
16 of the question.

17 THE WITNESS: No. I always
18 consider that personal choice, and some
19 people smoked and some people didn't. I
20 worked for a tobacco company, and probably
21 the same percentage of smokers and
22 non-smokers is the general audience, general
23 population.

24 Q. (By Mr. Gruenloh) All right.
25 Let's go back to your budget for just a

1 second.

2 Can you tell me some of the
3 reasons why your advertising budget would
4 have increased?

5 A. Yes. It would increase during a
6 period of a new product introduction.

7 Q. Any other reasons?

8 A. And then it would really be more
9 of a shift between brand to brand, depending
10 on which brand is being most actively
11 promoted.

12 So the general budget, as I said,
13 stayed pretty much in the 50s, but there
14 would be a shift from brand to brand,
15 depending on what the company perceived as an
16 opportunity for growth.

17 Q. Can you tell me some of the
18 reasons why your advertising budget would
19 decrease?

20 A. Well, as I said, it would
21 decrease on a per brand basis if you stopped
22 promoting it, because the brand was declining
23 and there didn't seem to be as much appeal
24 for the brand as there had been earlier.

25 For the company advertising to be

1 reduced would be because the financial
2 resources were needed somewhere else, for
3 whatever reason.

4 Q. When consumption on a particular
5 brand decreased, did you generally get an
6 increase in your marketing budget for that
7 brand or did you generally get a decrease in
8 the marketing budget for that brand?

9 A. Well, initially when it starts to
10 decrease, in some cases, not all cases, you
11 may get a short-term increase in the budget
12 to see if that helps to stop the slide.

13 If it continues to decline, you
14 would get a decrease in the budget.

15 Q. When you saw decreases in the
16 consumption of certain products, did you do
17 specific research to determine why consumption
18 was decreasing in those products?

19 A. No, because most of the products
20 where we saw the decreases were in, of
21 course, older products. And products which,
22 in the whole industry, they were receiving
23 decreases.

24 For instance, Pall Mall, which was
25 a non-filter, obviously it had been

1 decreasing for many years. It was the
2 company's number one brand when I went to
3 work there. And it was just the people were
4 no longer smoking non-filter cigarettes.

5 Then there was a -- you know, you
6 had to switch from the higher interest in
7 low tars during the '70s, a lot of the full
8 flavor filter brands started to decline. And
9 so you didn't really have to read too
10 thoroughly into what was going on, because
11 you had research that was showing that a lot
12 of those smokers were switching to low tar
13 cigarettes.

14 And then the last change was when
15 the price value brands became very popular
16 starting in the '80s, and then there was a
17 switch from full revenue brands to price
18 value brands.

19 So you knew the brands were
20 declining and you knew why. You knew where
21 the business was going.

22 Q. So you just knew why consumers
23 weren't smoking your product if there was a
24 decline, you didn't have to do specific
25 research?

1 A. That's correct. It was available
2 through the data that was coming in. Sure.

3 Q. So if you had to make a decision
4 whether to increase or decrease a marketing
5 budget of a product that was in decline, you
6 wouldn't do any research? It wasn't
7 necessary, you just knew?

8 A. Well, we knew because we had --

9 MR. BASSETT: Object to the form
10 of the question.

11 THE WITNESS: We had switching
12 studies, which told us where smokers were --
13 which brands they were switching from and to,
14 in general terms, and you knew directionally
15 where the business was going, so, no, we
16 would not have to.

17 Q. (By Mr. Gruenloh) In those
18 switching studies that you just mentioned,
19 did you gather data on why folks were
20 switching?

21 A. No, because it was large numbers.
22 It would be in the thousands. It was really
23 just to -- it was true switching data. It
24 was a syndicated -- syndicated research.

25 Q. In terms of the consumer's

1 awareness of the health risks of smoking,
2 would you say that that awareness, if we
3 start from the '60s and go to the present
4 time, would you say that that awareness has
5 heightened or has grown less?

6 A. I think the awareness is the
7 same. I think the publicity is a lot
8 harder, the press coverage.

9 Q. Okay. You think that people were
10 just as aware of the health risks of smoking
11 back in the 1960s as they are now today?

12 A. In general terms, yes, I think
13 so.

14 Q. What is your basis for that?

15 A. I mean, people have talked about
16 smoking for generations. I mean, you can go
17 back to World War I -- I mean, World War II
18 and you see the old movies they were talking
19 about coffin nails, and there were other
20 expressions for cigarettes. So it is nothing
21 new. I think the awareness has been there.

22 Q. Do you know what the position of
23 the CEO of American Tobacco was back in 1960
24 with regard to whether smoking causes cancer
25 or not?

1 A. No, I --

2 MR. BASSETT: Object to the form
3 of the question.

4 THE WITNESS: No, I'm not. I'm
5 not even sure who the president was in 1960.

6 Q. (By Mr. Gruenloh) Do you know
7 what the public position of the CEO of
8 American Tobacco was back in 1960 with regard
9 to nicotine and whether it's an addictive
10 drug?

11 MR. BASSETT: Object to the form
12 of the question.

13 THE WITNESS: No, I don't.

14 Q. (By Mr. Gruenloh) Do you know
15 what the public position of American Tobacco
16 was when it wound up, in 1994, as it relates
17 to smoking and whether it causes lung cancer?

18 MR. BASSETT: Object to the form
19 of the question.

20 THE WITNESS: No, I'm not sure
21 what our position exactly was, the exact
22 phraseology. I know how we felt about the
23 nicotine addiction, because we did not
24 believe, and I still don't believe it is
25 truly addictive. It's just -- the definition

1 I'm using is different than the definition
2 than the Surgeon General is using. I grew
3 up with a different definition of addiction.

4 So now under today's definition of
5 addiction, nicotine is addictive. To me, the
6 definition has changed an awful lot in 30
7 years.

8 Q. (By Mr. Gruenloh) All right.
9 We'll get to that in a second, but let me
10 ask you, do you know if there's been any
11 change from 1960 to 19~~9~~5 of the public
12 position of American Tobacco regarding whether
13 smoking causes cancer?

14 A. I do not.

15 MR. BASSETT: Object to the form.

16 Q. (By Mr. Gruenloh) I'm sorry, I
17 didn't hear you.

18 A. I do not know.

19 Q. What was the definition of
20 addiction that you grew up with?

21 A. I grew up with the definition of
22 addiction where it was associated primarily
23 with a drug like heroin, where to stop using
24 the drug required severe withdrawal, maybe
25 even being institutionalized; completely

1 different than stopping smoking.

2 Q. Do you know whether the quantity
3 of nicotine in a cigarette can be controlled
4 or manipulated?

5 MR. BASSETT: Object to the form
6 of the question.

7 THE WITNESS: No. I was always
8 told, and what I believed, was that there's
9 a direct relationship between tar and
10 nicotine, and when the tar goes down, the
11 nicotine goes down. And that's what I
12 believed, and that's what I believe to this
13 day.

14 Q. (By Mr. Gruenloh) Can you tell
15 me why nicotine is desirable in cigarettes?

16 MR. BASSETT: Object to the form
17 of the question.

18 THE WITNESS: Well, it does
19 impact the taste, I can tell you that,
20 mainly because I tasted a nicotine-free
21 cigarette. I can relate it to drinking
22 caffeine-free coffee. It has a different
23 taste than regular coffee. And I've been
24 told there's a pharmacological effect. I'm
25 not sure exactly what that is.

1 Q. (By Mr. Gruenloh) Does that mean
2 that nicotine is a drug?

3 MR. BASSETT: Object to the form
4 of the question.

5 THE WITNESS: It depends on who
6 you're talking to. To me it's not, but
7 apparently to a lot of people it is.

8 Q. (By Mr. Gruenloh) Well, how does
9 nicotine taste?

10 A. I really have no idea. I can
11 tell you that the cigarette tastes different
12 when it doesn't have it. I also know it is
13 obviously in the tobacco plant.

14 Q. Isn't it true that nicotine has a
15 harsh and bitter taste and flavor that's
16 rationally added to cigarettes to mask the
17 flavor of the nicotine?

18 MR. BASSETT: Object to the form
19 of the question.

20 THE WITNESS: I have no idea. I
21 can just tell you that there is a difference
22 when there is no nicotine. There is a
23 difference in the taste of the cigarette.
24 That is from firsthand experience. That is
25 a personal observation that I experienced.

1 Q. (By Mr. Gruenloh) Can you tell
2 me the pharmacological effects of nicotine?

3 A. No, I can't. I can just tell
4 you what I have read. They say for a
5 smoker it helps with maybe concentration.
6 They say for some people it relaxes. For
7 some people it is a stimulus. So I really
8 -- you know, there's no simple answer.

9 Q. Can you name for me the studies
10 that you've read that you've based your
11 opinion that nicotine is not addictive?

12 MR. BASSETT: Object to the form
13 of the question.

14 THE WITNESS: I didn't read
15 studies, no. It would have been just --

16 Q. (By Mr. Gruenloh) You just told
17 me that you base your --

18 MR. BASSETT: Let him finish
19 answering the question, please, and then you
20 can ask a follow-up. Are you finished?

21 THE WITNESS: You better repeat
22 the question again. I'm sorry.

23 Q. (By Mr. Gruenloh) In your
24 previous answer, you had alluded to some
25 things that you had read, when I asked you

1 about the pharmacological effects of nicotine.

2 You said no, I only know what I've read.

3 So what studies have you read?

4 A. Oh, no, it's not what I read in
5 studies. Maybe it was things that I read in
6 articles that were sent down up from research
7 or whatever. I didn't read any studies.

8 You know, this is information that
9 I'm getting secondhand through research, who
10 would receive a lot of data and information
11 that was going on.

12 Q. Through the research and
13 development department at American Tobacco?

14 A. That's correct. That's correct.

15 Q. Did you ever do any marketing
16 research regarding high nicotine cigarettes?

17 MR. BASSETT: Object to the form
18 of the question.

19 THE WITNESS: Not that I'm aware
20 of.

21 Q. (By Mr. Gruenloh) Did you ever
22 do any research regarding nicotine-free
23 cigarettes?

24 A. No. Not that I'm aware of. At
25 least not while I was involved.

1 Q. Do you know what the term impact
2 or hit means as related to nicotine?

3 A. I have heard about it, yes.

4 Q. What does it mean?

5 A. That means you get an impact when
6 you -- of nicotine when you inhale a
7 cigarette.

8 Q. When you were conducting marketing
9 research, doing polls, doing focus groups or
10 anything like that, did you ever take
11 dependence into account? Did you ever factor
12 that in when you were framing your questions
13 or doing any of that research?

14 MR. BASSETT: Object to the form
15 of the question.

16 THE WITNESS: What research that
17 we would be framing a question on dependence?

18 Q. (By Mr. Gruenloh) Consumer
19 research regarding the acceptability of your
20 cigarettes, regarding --

21 A. No, we didn't.

22 Q. -- all of the things that we've
23 talked about today, consumer research?

24 A. No, we would not have. We would
25 not have.

1 Q. And again, can you name for me
2 any of the pharmacological effects of
3 nicotine?

4 A. Not specifically. Again, I'm not
5 a chemist. What I gave you in my layman's
6 comments which I had heard or read, you
7 know, dealing with research over the years.

8 Q. Research from your research and
9 development department at American Tobacco?

10 A. That's right.

11 Q. What is reverse engineering?

12 A. I have no idea.

13 Q. You never have heard that term
14 used before?

15 A. No.

16 Q. Again, I'm reading from Exhibit 1.
17 It says Counsel for Plaintiff will take the
18 videotaped deposition of Brown & Williamson
19 Corporation, a successor by merger to The
20 American Tobacco Company by the person most
21 knowledgeable about the marketing, market
22 research, and consumer testing of Carlton
23 brand cigarettes for the years 1974 through
24 1995.

25 Who made the determination that

1 you were the person most knowledgeable about
2 those issues for those years? Do you know?

3 A. The attorneys asked me to talk
4 about the brand, and I guess that is how
5 they made that decision.

6 Q. Do you know if they contacted
7 anyone else?

8 A. I do not, no.

9 Q. And again, sir, it is your
10 testimony today that the awareness of the
11 health risks of cigarette smoking that folks
12 were just as aware back in the 1960s as they
13 are today; is that correct?

14 A. That's correct.

15 MR. GRUENLOH: Give me a half
16 second to make sure I haven't missed
17 anything.

18 Q. (By Mr. Gruenloh) Do you believe
19 that advertising, as in Exhibit 2, that
20 Carlton is the lowest, is deceptive in any
21 way?

22 A. No, I do not.

23 Q. Do you know whether the sales of
24 Carlton increased or decreased in 1964 when
25 the first Surgeon General's report on smoking

1 came out?

2 A. That was '67, I think. I'm sure
3 it increased. The Surgeon General's
4 report --

5 Q. You're sure that sales increased?

6 A. I'm sure that the Surgeon
7 General's report -- well, the FTC report on
8 tar and nicotine is the one that really made
9 it grow, which was '67. I don't know about
10 1964.

11 Q. Okay. When the Surgeon General's
12 report came out in 1964 --

13 A. I don't know if that significantly
14 impacted Carlton's growth or not. Carlton's
15 growth years, big growth years, were the
16 '70s.

17 MR. GRUENLOH: All right. That
18 is all.

19 MR. BASSETT: Okay.

20 THE VIDEOGRAPHER: We are off the
21 video record at 2:14.

22 (Whereupon, the deposition was
23 concluded.)

24 .

25 .

1 STATE OF GEORGIA:

2 COUNTY OF FULTON:

3 I hereby certify that the foregoing
4 transcript was reported, as stated in the
5 caption, and the questions and answers
6 thereto were reduced to typewriting under my
7 direction; that the foregoing pages represent
8 a true, complete, and correct transcript of
9 the evidence given upon said hearing, and I
10 further certify that I am not of kin or
11 counsel to the parties in the case; am not
12 in the employ of counsel for any of said
13 parties; nor am I in anywise interested in
14 the result of said case.

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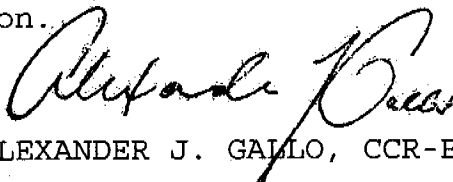
25 .

A. William Roberts, Jr., & Associates

1 Disclosure Pursuant to O.C.G.A. 9-11-28

2 (d):

3 The party taking this deposition will
4 receive the original and one copy based on
5 our standard and customary per page charges.
6 Copies to other parties will be furnished
7 based on our standard and customary per page
8 charges. Incidental direct expenses of
9 production may be added to either party where
10 applicable. Our customary appearance fee
11 will be charged to the party taking this
12 deposition.

13 

14 ALEXANDER J. GALLO, CCR-B-1332

15 My commission expires on the

16 17th day of March, 2001.

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1 CAPTION

2 The Deposition of Eric Gesell, taken
3 in the matter, on the date, and at the time
4 and place set out on the title page hereof.

5 It was requested that the deposition
6 be taken by the reporter and that same be
7 reduced to typewritten form.

8 It was agreed by and between counsel
9 and the parties that the Deponent will read
10 and sign the transcript of said deposition.

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1 CERTIFICATE

2 STATE OF :

3 COUNTY/CITY OF :

4 Before me, this day, personally
5 appeared, Eric Gesell, who, being duly sworn,
6 states that the foregoing transcript of
7 his/her Deposition, taken in the matter, on
8 the date, and at the time and place set out
9 on the title page hereof, constitutes a true
10 and accurate transcript of said deposition.

11

12 Eric Gesell

13 .

14 SUBSCRIBED and SWORN to before me this
15 day of , 2000 in the
16 jurisdiction aforesaid.

17

18 My Commission Expires Notary Public

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DEPOSITION ERRATA SHEET

2 .

3 RE: Alexander Gallo & Associates

4 File No. 1062

5 Case Caption: Little vs. Brown & Williamson

6

7 Deponent: Eric Gesell

8 Deposition Date: March 28, 2000

9 .

10 To the Reporter:

11 I have read the entire transcript of my
12 Deposition taken in the captioned matter or
13 the same has been read to me. I request
14 that the following changes be entered upon
15 the record for the reasons indicated. I
16 have signed my name to the Errata Sheet and
17 the appropriate Certificate and authorize you
18 to attach both to the original transcript.

19 .

20 Page No./Line No. Reason:

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A. William Roberts, Jr., & Associates

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SIGNATURE: _____ DATE: _____

23

Eric Gesell

[illegible]

